

MONTREAL "WITNESS" PUBLICATIONS.

EVERY history of the Guibord case must contain numerous references to the Montreal WITNESS. The first objection taken against the Institut Canadien by the ecclesiastical authorities was, that the WITNESS and the SEMEUR CANADIEN were amongst the papers taken by it; and yearly ever since, this journal has received special attention from the Bishop, whose efforts to impair its influence and cause its death, have been unremitting. But, notwithstanding this great opposition, the WITNESS has steadily increased in circulation, and now stands firmer than ever before in the sympathies of the public from the many rude shakes which it has successfully withstood.

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(CONTINUED ON THIRD PAGE OF COVER.)



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BISHOP BOURGET.—(See page 136.)

HISTORY OF THE GUIBORD CASE.

ULTRAMONTANISM VERSUS LAW AND HUMAN RIGHTS.

Cursed is he who maintains that in a conflict between the civil and ecclesiastical laws, the civil law should prevail.—*Syllabus, Prop. xlii.*

Individual servitude, however abject, will not satisfy the party now dominant in the Latin Church—the State must also be a slave. * * * * No one can become her convert without renouncing his moral and mental freedom, and placing his civil loyalty and duty at the mercy of another.—*Gladstone.*

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P R E F A C E .

In writing, or rather compiling, this History of the Guibord Case, it has been thought advisable to give as much prominence as possible to the official records of the occurrences herein recorded, that they might be set forth not only without prejudice, but without any suspicion of unfairness. The case has, for many years, been a *cause célèbre*; its principal events have been stated over and over again by nearly every journal in Christendom, and it has been thought better to present to the public the facts in a manner which could not be disputed, and with little, if any comment.

There are two or three points which, however, might be introduced into this preface which would hardly be appropriate in the body of the book. In the first place, although the late Joseph Guibord died on November 19th, 1869, there has since been no refusal to bury members of the Institute, and at least eleven have died while holding their membership. Their remains received the last privileges of the Roman Catholic Church and were buried in consecrated ground. The eleven referred to were as follows:—

Arsene Charlebois, died August 11th, 1870. He paid his dues to the Institute to the date of his death, and was not only a member of it, but also a Freemason. He was buried under his pew in the Church of St. Anne. It was reported to the Curé of that parish that he was both a Freemason and a member of the Institut Canadien. The Curé telegraphed this to the Bishop of Montreal and asked for instructions. The Bishop obtained affidavits from certain convenient persons that they knew the deceased intimately, but they were not aware that he was either a Freemason or a member of the Institut Canadien, and on the strength of these affidavits His Lordship telegraphed back that his remains be buried with ecclesiastical rites.

Achille David, died November 18th, 1874.

Theophile Fahrland, died in Chicago, November 25th, 1870.

Charles H. Lamontagne, died March 23rd, 1875.

Ludger Labelle, died March 1st, 1872.

N. F. A. Langelier, a member of the Institute, who died by his own hand, and was nevertheless buried in consecrated ground.

Simon Martin, an old Superintendent of the Institute, died in 1871.

J. E. Melancon, died December 4th, 1872.

Alfred Picault, also a Freemason, died in the West Indies, December 24th, 1872.

Dr. F. L. Tavenier, died in St. Louis, and his remains were brought all the way to Montreal for interment in the consecrated ground, and he was buried with great éclat after a grand mass had been said over the corpse in the Parish Church. That the Bishop might know that he was really a member of their body, the Institute passed a vote of condolence on his death. This was published in the French and English papers, but still his remains were buried with ecclesiastical rites.

Antoine Jellier, died July 6th, 1873. He was once President of the Institute, and because of his standing in the society, and his having paid more fees than would have entitled him to a life membership, he was made a life member.

All these, who persisted in their "sin" after having the example of Guibord set before their eyes, were buried with all the honors and privileges the Church could give. It might be said that some of them had not paid their dues to the date of their death, but Guibord himself was two years behindhand; also the Church had the same or better means of knowing they had been members than they had with regard to Guibord, and in one case the matter was officially brought before the Bishop.

Not only are the members of the Institute now buried without trouble, but married also, as in the case of Mr. Gonzalve Doutre, a member of the legal firm which has for six years represented the Institute in the Guibord case, and many others, some being equally remarkable.

Again, it is worthy of note that although it has been frequently charged against the ecclesiastical authorities that at the attempted burial on 2nd September employees of the Parish and other churches were given a holiday and formed a portion of the body

of "our very dear brethren" who stoned the hearse containing Guibord's remains, this has never been denied and can be proven if denied. From the fact that in his first pastoral after the attempted burial His Lordship commends his faithful people for their actions on the occasion, and that in his last pastoral he points to the fact that there was no disturbance at the final burial as an incontestable proof of his power over his people, it must be inferred that in both cases they performed his will, and that will is one which puts his allegiance to the Queen and her laws in a very unsatisfactory light.

One of the most remarkable incidents of the Guibord case, and one which has received little if any attention, was the evidence given by the Hon. L. A. Dessaulles in the trial before Judge Mondelet. In his cross-examination he is asked if a charge contained in one of his essays in the *Annuaire* was not an insult to the Pope, and if he was not antagonistic to Papal authority. To this Mr. Dessaulles replied, in one of the most remarkable answers ever given before a judge. He entered fully into the tyrannical deeds of the Emperor of Austria and the Czar of Russia, which, at the time referred to, were ringing in the ears of the civilized world; and proved that the tyranny of the "King" of Rome was worse than that of even these potentates; applied to him the term executioner (*bourreau*), and proceeded to prove step by step from history every accusation he had made. After conclusively proving by an overwhelming array of incontrovertible facts the truth of one series of his accusations, he so concludes: "The expression or statement of a fact is not an insult, if true; I have not therefore insulted the Pope in relating an historical truth." This was probably the only case of history being written under oath, and it is remarkable that it has not received more attention.

The publishers issue this book in the hope that it will prove a valuable addition to the controversy now going on in regard to the conflict between the civil and ecclesiastical claims.

IN MEMORY OF JOSEPH GUIBORD.

The storm of six long years is past,
And peacefully he rests at last—
Thrice hearsed, thrice cursed, let honest Fame
Blow treble honor to his name;
If thrice six years of praise ensue
'Tis but the hero's earthly due.

The humble printer's mighty art,
Though banned, will vindicate her son,
And tell to every truthful heart—

While woods are green and waters run—
That he who braves a despot's frown
Will wear at length the victor's crown;
Even when slain, and torn asunder,
And scattered piecemeal, trodden under
The brutal feet of frenzied foes,
His deeds will rise, as Christ arose,
And borne upon the chainless air
Will plead for freedom everywhere.

Let curses from their rookery fly,
And flap their foul wings o'er his bones,
The autumn wind that round him moans,
Will mock them, while in vain they try
To penetrate those friendly stones.

Come what might come, from man or elf,
He dared not quarrel with himself,
Nor stab the Truth that in his breast
Had found a warm and welcome nest.
No terrors of the burning lake,

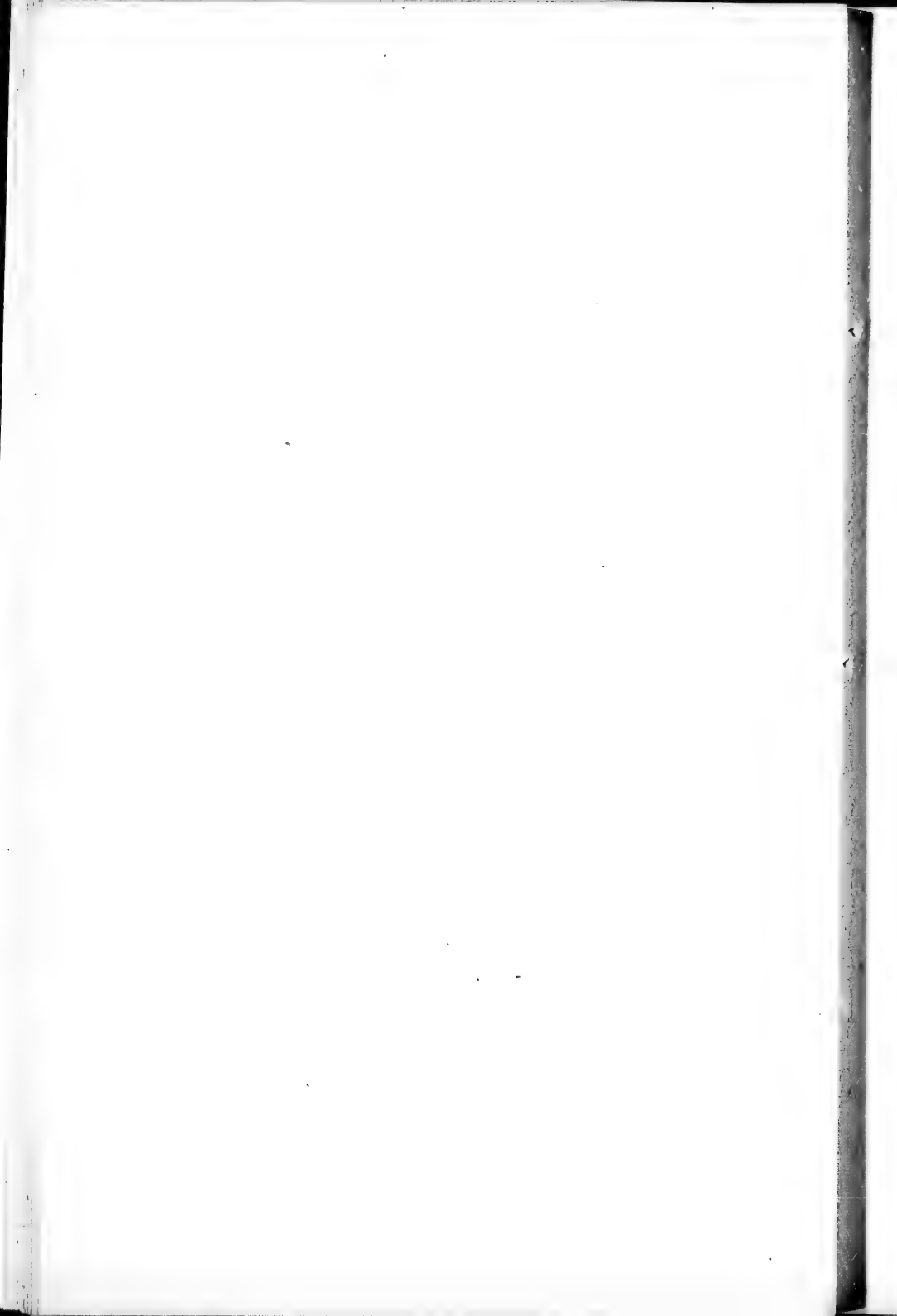
Fancied or real, beyond the grave,
Nor purgatorial flames could shake
His manly soul, so firm and brave,
For he was neither fool nor slave.

True to himself, he lived and died,
Not wilful, nor elate with pride,
But steadfast in his honest thought,
Self-justified, self-ruled, self-taught.

Our Brother ! wheresoever now
Thy spirit lifts its freeborn brow,
Behold thy kindred !—not alone
In Canada will thousands own
Relationship ; throughout all lands,—
Wherever freedom shines or dawns,
An army with uplifted hands
Impelled by glowing links that bind
Nobility of mind to mind,
Will crown thee with their benisons.

Thus, Guibord ! shall the commonwealth
Of truth and reason's fearless sons,—
Scorners of men who think by stealth,
Now hold thee in fraternal trust,
And consecrate thine injured dust,
While woods grow green and water runs.

G. MARTIN.



HISTORY OF THE GUIBORD CASE.

I.

L'INSTITUT CANADIEN.

The conflict which has arisen in this country between the ecclesiastical and the civil authorities over the burial of Joseph Guibord, is but an episode in the wider conflict between modern Ultramontanism and freedom of thought. The Guibord case is a consequence of the efforts of the Roman Catholic Bishop of Montreal to suppress a national literary society known as l'Institut Canadien.

This institution has played an important part in the intellectual and political history of the people of this Province during the last thirty years, and as it has a close connection with certain passing events which are destined to become historical, it may be of interest to notice a few of the more salient points which have marked its rise and progress up to the present time.

ITS FOUNDERS.

On the evening of the 17th December, 1844, a number of young men assembled in a room on Little St. James street and organized a literary society, to which they gave the name of "Institut Canadien." Their object was to cultivate a pure spirit of patriotism, to obtain instruction, and, by discussions and essays, to prepare themselves for the honorable activities of life. Full of the ardent and generous enthusiasm of youth, and inspired with a fine ambition to acquire distinction for themselves and their country, these young Canadians adopted as their motto the noble words, "*Altius Tendimus*," and selected for their coat of arms the figure of a beehive with the words beneath, "*Traavail et Concorde*."

The following is the first list of officers elected by the Institute:—President, A. C. Nelson; 1st Vice do., P. R. Lafrenaye; 2nd Vice do., Joseph Laurin; Recording Secretary, A. Gerin Lajoie; Assistant Recording Secretary, M. Allard; Corresponding Secretary, O. Morin; Assistant Corresponding Secretary, E. Malhiot; Treasurer, Ed. Fournier; Librarian, L. Racine; Assistant Librarian, L. Delorme.

Before this time there was not a single French public library in Montreal, or reading-room where French papers could be seen. The Institute very soon became the centre of the activity, intelligence and talent among the young men of the city, and at their weekly meetings they publicly discussed the important questions of the day, and listened to the reading of a carefully prepared essay by one of their number. In a little volume published in 1855, we find reprinted the essays of four of the members, viz., Messrs. Joseph Doutre, J. B. E. Dorion, C. E. Laberge, and P. E. Lafrenaye, in which are eloquently set forth large and liberal views of society, government, commerce and kindred subjects. It is easy to understand how free discussion among the members, along with varied reading and studies, should have developed

GENEROUS AND LIBERAL IDEAS,

and a wider view of many public questions. The Institute increased so rapidly in popularity and influence that it began to excite the jealousy of the clergy. The latter could not bear to see so important an intellectual movement going on independently of themselves. As they beheld the growing intelligence and power of these young Canadians, left to the unfettered exercise of their own minds, they began to tremble lest the sceptre of intellectual authority they had so long been accustomed to wield might be about to depart from their hands. That a number of individuals should unite to form a mutual improvement society, and for the pursuit of knowledge, without they, the clergy, being present to direct and control the members, seemed to them a circumstance fraught with the gravest danger to their own supremacy over the minds of those persons composing the Institute. Moreover, this intellectual *renaissance* was spreading all over the country, and nearly every town and large village had its Insti-

tute, fashioned after the original one in Montreal. The flower of Canadian youth were making a common movement towards higher and better things. This spectacle, so cheering to the heart of the true patriot, was witnessed by the clergy with dismay, and they resolved to extinguish the Montreal Institute and its numerous offshoots throughout the Province. The work which they set themselves to do was to stifle one of the noblest impulses that ever arose among the Canadian people, and one which, had it been encouraged, would have by this time raised the French-Canadian race to a far higher place among peoples than that which it now occupies. Well may the Canadian patriot and lover of his race mourn when he sees how far the Romish Church was successful in arresting this movement so bright with promise, and in folding once more around the people the mantle of intellectual darkness and spiritual tyranny.

NEW INSTITUTES FOUNDED.

It has been shown that the idea of the Montreal Institute extended to other places in the country. In 1852 similar societies had been formed in Quebec, St. Rochs, Three Rivers, St. John's, St. Athanase, Joliette, Chambly, Cohoes, N.Y., Sorel, Berthier and L'Assomption. At a later period there were over one hundred in the Province, of which about sixty obtained Acts of Incorporation. The Montreal Institute was incorporated by Act of Parliament in 1852, 16 Vic., chap. 261, under the presidency of Mr. Joseph Doutre. Article 2 states that "L'Institut Canadien has for its object to extend and develop a taste for science, art and literature." The names of members forming the Institute, as incorporated, were:—Joseph Doutre, C. F. Papineau, L. Ducharme, V. P. W. Dorion, A. Cressé, W. Prévost, A. Teller, S. Martin, A. A. Dorion, J. G. Barthe, P. Mathieu, J. A. Hawley, R. Laflamme, Joseph Papin, J. Emery Coderre, J. W. Hallimand, P. R. Lafrenaye, F. Cassidy, Louis Ricard, Eugène L'Ecuyer and C. Loupret.

To show the ability of many of its members, and how closely the history of the Institute is connected with that of the country, it may be mentioned that at a meeting of the Institute in 1854, addresses of congratulation were presented to fourteen of its members upon their election to seats in Parliament.

OPPOSITION OF THE CLERGY.

The various institutes throughout the country were receiving a small annual grant from Parliament, and the public, except the clergy, universally looked upon them with great favor. The first movement of the clergy directed against the Institute was to raise the question of nationality. They secured, by their influence, the adoption of a rule by the St. Jean Baptiste Society that none but French-Canadians, or those married to French-Canadian ladies, could become members. In the case of the late Francis Cassidy, who, though of Irish birth, was a member of both societies, this rule was not observed; but when it was desired to make Mr. Cassidy President of the Institute, it was found necessary to alter the constitution, so as to open the doors to all nationalities. This aroused the anger of the clergy, who then more openly expressed their opposition to the Institutes in Montreal and smaller towns. As one means to compass their downfall they opened rival institutions entirely under clerical control, to which they gave the name of Instituts Nationaux. Many of these societies never had any real existence, except on paper, but under false pretences they succeeded in obtaining grants from Parliament for several years. By these means, and by the exercise of spiritual terrors, they succeeded either in extinguishing all the societies outside of Montreal, or in securing entire control over them and altering their character.

L'Institut Canadien of Montreal held out nobly, and struggled long and bravely against the persecutions of the clergy. Its success had been such that in 1857 not less than seven hundred members contributed to its maintenance, and it had long since procured commodious premises for its meetings and library on Notre Dame street, where it is now established. In 1858, the clergy determined, if possible, to destroy the Institute. As rivals to this they had already three institutions of their own,—the Sulpicians had formed the Cabinet de Lecture and Cercle Littéraire, and the Jesuits, L'Union Catholique, where members had access to libraries and reading-rooms gratuitously or at trifling cost. They attempted at first to induce the members of the Institute to exclude from their number those who did not profess the Catholic religion, and then to exclude from their reading-room the *Witness* and the *Semeur Canadien*, two Protestant papers.

After protracted debates, which lasted several weeks, the victory remained with those members who were desirous of maintaining the integrity of their constitution in regard to the equality of creeds and origins, and their liberty of reading all organs of public opinion.

ATTACK UPON THE LIBRARY.

Then a system of calumny was organized in order to represent the library of the institution as containing several books of an immoral character, and finally some leaders, in the interest of the clergy, circulated through the city a written declaration containing those calumnies and soliciting signatures to a resignation of the members in mass. The effect was the withdrawal from the Institute of one hundred and fifty members at one time, and the foundation of the Institut Canadien Francais, with the view of taking away from the Institute those who had personal sympathies with the one hundred and fifty retiring members, but had objections to putting themselves under the exclusive tutorship of the clergy. This new institution, though apparently founded by laymen, has been kept in existence by clerical subsidies and countenance.

Since 1858, the French-Canadian young men who had almost all enrolled under the banner of the Institut Canadien, have been divided among that institution and the three clerical societies above named. The Institut Canadien could not but lose some of its efficiency under the active and unceasing persecutions of the clergy, and the rivalry of so many institutions supported by rich corporations.

Efforts were made to show the clergy that the only ground on which they avowedly persecuted the Institute, namely, the pretended immorality of their books, was unfounded. A deputation waited upon the Bishop of Montreal with a catalogue of their books, offering to purge their library of any book that should be indicated to them as immoral. His Lordship kept this catalogue six months before him, and when the deputation went back to have an answer, His Lordship returned it without indicating a single work as being immoral.

Notwithstanding that the Bishop was unable to point out any book as immoral, he maintained the pastoral prohibition and re-

ligious penalties he had decreed against the members of the Institute, which consisted in the refusal of sacraments, even *in articulo mortis*, and a consequent refusal to bury any one dying a member in a Catholic cemetery. It was this action of the Bishop that gave rise to the now celebrated Guibord Case.

Many members of the clergy acknowledged the justice of the cause of the remaining members of the Institute, but they were obliged to submit to the dictates of their superiors, and they continued to enforce the penalties imposed by the pastoral letter of 1858. By the action of the clergy and the existence of the three rival literary institutions above mentioned, the number of members was reduced in 1867 to about three hundred, of whom only one hundred and fifty were in a position to pay their annual subscriptions.

On the 17th of December, 1866, the twenty-second anniversary of its foundation, the Institute inaugurated its new and spacious building at 111 Notre Dame street, where it now remains. Previous to this date, the Institute had erected a magnificent monument in the Roman Catholic cemetery to the memory of those Canadians who lost their lives in the troubles of 1837-8.

When Prince Napoleon was in Montreal, in 1861, he visited the Institute, and as a mark of his sympathy with their cause, he presented the library with a large number of rare and beautiful books, valued at \$2,600. The Emperor Napoleon had already given the Institute some very beautiful statues, valued at \$1,000.

In proportion as the Bishop became more severe in his treatment of the members of the Institute and more intolerable in his demands, the members, on the other hand, became bolder in their resistance. Those who had seceded were feeble and timid spirits who had not the courage to avow their convictions, while those who were left behind retained with them the true manhood of the original society. They freely, yet always respectfully, canvassed the action of the Bishop and clergy, and advocated religious toleration and freedom of thought and speech. At the celebration of the anniversary of the Institute in December, 1868, Hon. L. A. Dessaulles delivered an address on tolerance, in which he advocated, with great force, that simple Christian charity which Christ taught in His sermon on the mount.

This gave great offence to the Bishop, who had the "Annuaire" for 1868, in which the address was published, condemned by the Index at Rome. On that occasion also Horace Greeley addressed the Institute, giving utterance to these words:—

"For the true Liberal, in the century in which we live, there is but one country, the world; but one religion, love to God and man; and one patriotism, to benefit and elevate the human family. We have for adversaries, tyranny, ignorance, superstition, and everything which oppresses or degrades."

On the same occasion Mr. A. Geoffrion, an eloquent young lawyer, and member of the Institute, gave an address, in which he said:—

"It is not to be forgotten that young men have always been feared by whoever seeks to dominate either in the political or religious world. It is the age of noble and disinterested aspirations; the age when no selfish interest imposes silence on the conscience; the age, finally, when man has not yet learned to wear a yoke."

Such sentiments as the above were published in the "Annuaire" under the sanction of the Institute, and served to render the book an object of horror to the clergy.

Owing to the widening of Notre Dame Street, the Institute had been obliged to demolish its first edifice, and rebuild at a loss of some \$4,000. From this and other causes the Institute became financially embarrassed, and in 1867 a committee was appointed to collect subscriptions, and an appeal made to all who loved freedom of thought and speech to assist in keeping up its usefulness. Nearly \$8,000 was subscribed in response to this appeal, about one-half coming from English Protestants.

In 1872 the constitution of the Institute was amended in several respects. At present any active member may become a life member who, not yet having paid the sum of \$50 in contributions or otherwise, shall complete that sum in one or several payments; and any person who having paid \$50 to the funds of the Institute shall be accepted by the Governing Committee. The reading-room and the library were thrown open gratuitously to the public. At the present time, with the exception of the Young Men's Christian Association's reading-room, in which the range of literature, however, is very limited, the reading-room of l'In-

stitut Canadien is the only *free* one in the city of Montreal. The number of journals taken in both languages is very large, and comprises organs of all classes of current thought. It is estimated that at least one hundred different persons visit the reading-room every day in summer, and in winter the number is much larger. The library contains about 9,000 volumes, and is also gratuitously open to the public. Thus this Institute, in freely affording the means of instruction and knowledge of passing events, is nobly fulfilling the primary end for which it was founded. The present superintendent is Mr. A. Boisseau, who has held that position for eight years, and has also been one of the Vice-Presidents.

The Managing Committee have adopted the plan of allowing any individual outside the Institute to borrow any book for one day or one month, at the rate of one cent per day, upon leaving a deposit equal to the value of the book. The number of persons who avail themselves of this privilege is rapidly increasing, and in this way the library is proving of great public utility.

THE PRESENT MEMBERSHIP.

The present membership is one hundred and sixty-five, and nearly one-half this number are English. The enemies of the Institute will, no doubt, be rejoiced to learn that the systematic persecution of it by the clergy, ever since 1858, has reduced its number from seven hundred to the present figure. It is, however, deeply gratifying to remember that when the English Protestants of Montreal saw a handful of their French-Canadian fellow-citizens bravely struggling against such tremendous odds for that intellectual freedom which they prize so highly themselves, they nobly came to their assistance, and helped to sustain the Institute in its darkest days. So may it ever be in the future struggles French-Canadians may have to sustain against aggressive and tyrannical Ultramontanism.

It is painful to have to mention the names of several eminent members of the Institute who were not strong enough to resist the storm of clerical denunciation which was directed against it. Soon after Guibord's death and the Bishop's refusal to bury him, the Hon. A. A. Dorion, the present Chief-Justice of Quebec, finding that his connection with the Institute was embarrassing

to his political course, sent in his resignation. The Hon. Mr. Geoffrion soon after did likewise in order to smooth the road of political advancement. Mr. R. Laflamme, M.P., while still a member of the Institute, secured his election for Jacques Cartier, in 1872. In the contest he boldly avowed his connection with the Institute, and defended it, while the most desperate efforts of the clergy failed to defeat him. In 1874, however, on the eve of the last general election, Mr. Laflamme resigned his position in the Institute, and was consequently returned without opposition.

LIST OF OFFICERS.

Below will be found the names of the principal officers of the Institute from its foundation to the present time, beginning with the Presidents:—1844-45, A. C. Nelson; 45-46, A. Gerin Lajoie; 46-47, Joseph Papin; 47, James Huston; 48, R. Laflamme; 48-49, V. P. W. Dorion; 49-50, F. Cassidy; 50-51, J. B. E. Dorion; 51-52, P. Blanchet; 52-53, Joseph Doutre; 53-54, J. Emery Coderre; 54-55, P. R. Lafrenaye; 55-56, Charles Daoust; 56, D. E. Papineau; 57, F. Cassidy; 58, Euclide Roy; 59, Louis Belanger; 60, Charles Daoust; 61, Peter L. McDonell; 62, L. A. Dessaulles; 63, A. Tellier; 64, C. F. Papineau and F. J. Durand; 65, L. A. Dessaulles; 66, J. E. Coderre and L. A. Dessaulles; 67, Joseph Doutre; 68, C. F. Papineau; 69-70, N. Aubin; 71-72, Gonzalve Doutre; 73-74, L. J. A. Papineau; 75, Joseph Doutre.

First Vice-Presidents in the order of their election:—P. R. Lafrenaye, Joseph Papin, James Huston, P. Blanchet, L. Delorme, G. Ouimet (1847), L. Labrèche-Viger, A. Mousseau, Auguste Papineau, L. Ricard, J. E. Coderre, P. Gendron, A. Tellier, C. Quevillon, Joseph Guibord (1852), C. F. Papineau, Joseph Durand, Michel Emery, L. Labrèche-Viger, A. Tellier, Charles Marcil, Pierre Doutre, C. Archambault, J. DeMontigny, Pierre Doutre, Ant. Comte, Edmond Dorion, Louis Rivet, C. F. Papineau, Méderic Lanctot, N. Cyr, W. Laurier, Arthur Buies, C. F. Pratt, A. Boisseau, E. G. Penny, A. Boisseau, Alex. Dufresne, C. A. Geoffrion, O. Ste. Marie, J. O. Turgeon, H. Prefontaine, Frederick Kay, Charles Alexander.

Recording Secretaries in the order of their election:—A. Gerin Lajoie, Magloire Lanctot, L. Labrèche-Viger, R. Laflamme, P. Benoit, C. F. Lamontagne, Charles Laberge, V. P. W. Dorion,

Joseph Papin, Noe Betournay, F. Cassidy, J. Durand, C. F. Papineau, L. L. Morin (1850), W. Marchand, Hector Fabre, A. St. Armand, J. Defoy, F. Chagnon, Chs. Marcil, Louis Joubert, D. L. Gauthier, Achille Belle, Méderic Lancot, L. E. Racicot, G. Doutre, Philippe Vandal, A. Branchaud, C. E. Bouthillier, J. Bouchard, J. Bte. Couillard, A. Lusignan, J. B. Doutre, N. Bienvenu J. G. Papineau, J. N. Bienvenu, A. Boisseau, A. E. Forget.

Treasurers in the order of their election:—Ed. Fournier, C. E. Belle, P. Blanchet, V. P. W. Dorion, B. Giroux, A. L. Lacroix, Charles Bourdon, P. Blanchet, V. P. W. Dorion, P. Blanchet, A. Jodoin, Noe Betournay, A. Tellier (three years), R. Trudeau (three years), P. B. Badeaux (two years), Leon Doutre (two years), P. A. Fateux, Amable Jodoin, Gonzalve Doutre (two years), L. E. Morin, P. Henry, Henry Lacroix (two years), F. B. Lafleur (two years), A. Brunet, L. C. Crevier, Alfred Brunet (two years), A. Boudreau.

Librarians:—L. Racine, J. B. E. Dorion, V. P. W. Dorion, C. Basinet, J. Huston, J. B. Ledoux, Auguste Papineau, C. J. H. Lacroix, Eric Labrosse, Louis Lemaire, T. G. Coursolles, J. E. Terté, J. E. Bibaud, D. E. Papineau, J. C. Racicot, N. E. Chevalier, C. J. N. DeMontigny, J. C. Racicot, J. C. Paette, C. Dion, C. S. Smith, F. A. Fissiault, Cyrille Bertrand, P. Blanchet, J. DeMontigny, L. Neveux, C. O. Perrault, P. Blanchet, C. A. Geoffrion, N. Durand, Alp. Lusignan, N. Duval (two years), J. Bouchard, A. Doutre (two years), F. O. Rinfret, P. B. Badeaux (two years).

II.

THE BISHOP AND THE INSTITUTE.

The person concerning whose mortal remains the great conflict was to be waged between the authority of Pope Pius IX. and that of Queen Victoria in Canada, was a printer, and worked nearly all his life industriously at his trade, most of the time with the late Louis Perrault. He bore an irreproachable character, was quiet and unassuming, thoughtful and studious. He was one of the early members of the Institute, and in 1852 was elected first Vice-President. His wife was Henrietta Brown, of Canadian birth, but of Irish parentage. Guibord was a sincere Catholic, and faithful in the observance of his religious duties.

The ostensible origin of the difficulty between the Bishop and the Institute was the pretence by the former that the library contained immoral books. In 1858 certain members of the Institute, acting under clerical advice, proposed a committee for the purpose of making a list of books in the library which, in their opinion, ought to be thrown out. An amendment was carried, by a considerable majority, to the effect that the library contained no improper books, and that the Institute was the sole judge of the morality of its library. Shortly afterwards the Bishop published a pastoral letter, in which he referred to the action of the Institute, and, after praising the course of the minority, pointed out that the majority had fallen into two great errors; first, in declaring that they were the proper judges of the morality of their books, an office that belonged only to the Bishop; and, secondly, in declaring that the library contained only moral books, although some of them were in the Index at Rome. He cited a decision of the Council of Trent, that any one who read or kept heretical books would incur sentence of excommunication, and that any one who read or kept books forbidden on other grounds would be subject to severe punishment and he concluded by making an appeal to the Institute to alter

its resolution, otherwise no Catholic would continue to belong to it. The issue thus raised between the Institute and the Bishop continued for nearly seven years, until 1865, when several members, including Guibord,

APPEALED TO ROME

against the conduct of the Bishop, claiming to be entitled to all the rights of the Church. The authorities at Rome seemed, for four years, to take no notice of the matter. In 1869 Mr. Gonzalve Doutre was commissioned by the Institute to proceed to Rome to represent that institution in the appeal. Mr. Doutre reached Rome on the 6th of September, and was put in communication with Cardinal Barnabo, who was Prefect of the Propaganda. Mr. Doutre had an interview with the Pope, and several consultations with Mgr. Nina, who represented the Holy Office. In obedience to the request of this prelate, Mr. Doutre submitted a memorandum of the manner in which the Institute would like the difficulty to be settled. Mr. Doutre's representations were not listened to, and the conduct of the Holy Office convinced him that they were quite willing to condemn the Institute, and fully decided not to condemn the Bishop. In the same year the Bishop also went to Rome to attend the Vatican Council. Without communicating with the members who appealed, he sent a pastoral letter to Canada, setting forth that the Pope had rejected the appeal and condemned the Institute. The pastoral letter contained the Decretum, in which it was pointed out that two things were especially forbidden:—1. To belong to the Institute while it taught pernicious doctrines. 2. To publish, retain, keep or read the "Annuaire" of 1868; and he added that any person who persisted in remaining a member of the Institute or in reading the "Annuaire" would be deprived of the sacrament, "*même à l'article de la mort.*" The Institute held a meeting on the 23rd of September, 1869, and resolved:—

1. "That the Institut Canadien, the object of whose foundation is purely literary and scientific, teaches no doctrine of any kind, and carefully excludes all teaching of pernicious doctrine.

2. "That the Catholic members of the Institut Canadien having learned of the condemnation of the 'Annuaire' of 1868

of the Institut Canadien, declare that they submit purely and simply to this decree."

These concessions produced no effect. The Bishop, in a letter from Rome to the administrator of the diocese at Montreal (which that officer received, he says, on the 17th November, the day before Guibord's death), denounces these concessions as hypocritical for the following among other reasons:—

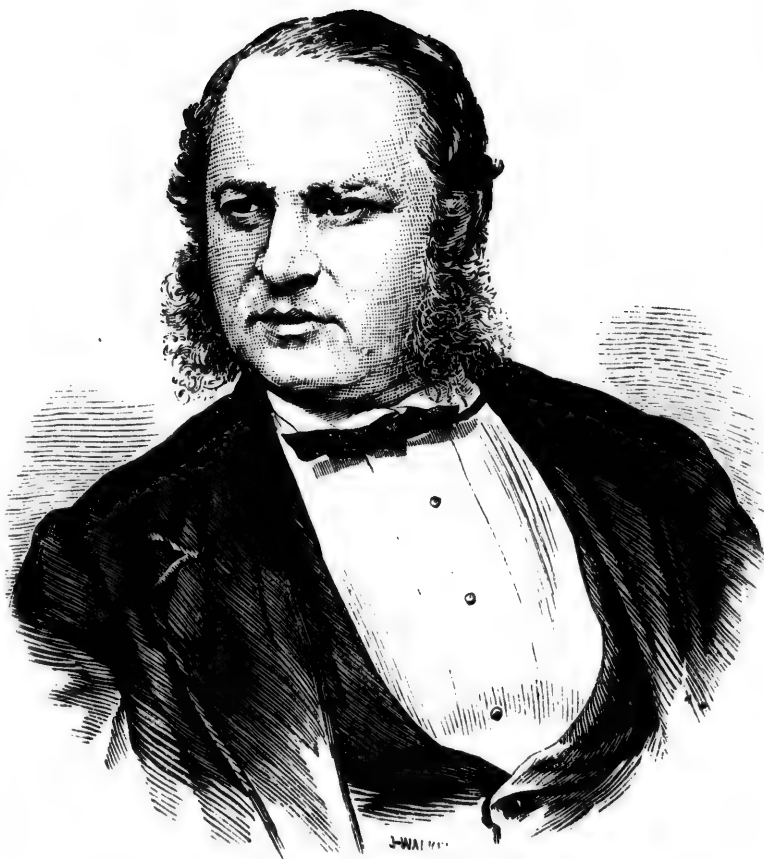
"Because this act of submission forms part of a report of the Committee, unanimously approved by the Institute, in which a resolution is proclaimed, until then kept secret, which establishes the principle of religious toleration, which has been the principle ground of the condemnation of the Institute."

This "principal ground of condemnation" of the Institute, viz., that it had passed a resolution which established the principle of religious toleration, was entirely new, and, it would seem, could not have been known to Guibord. It should also be mentioned, in order to complete the history of the case, that Guibord, about six years before his death, being dangerously ill, was attended by a priest, who administered unction to him, but refused to administer the holy communion unless he resigned his membership of the Institute, which Guibord declined to do. Guibord having died on the 18th of November, 1869, of a sudden attack of paralysis, on the 20th the widow caused a request to be made to the Curé and to the clerk of the Fabrique, to bury Guibord in the cemetery, and tendered the usual fees. Previously to this application, M. Rousselot, the Curé, having heard of the death of Guibord, and knowing that he was a member of the Institute, had applied to the administrator of the diocese for his directions. The latter replied that he had yesterday received a letter from the Bishop directing him to refuse absolution, "*même à l'article de la mort*," to members of the Institute; he could not, therefore, permit "*la sépulture ecclésiastique*" to Guibord. The Curé then refused to bury Guibord in the consecrated part of the cemetery where Roman Catholics were ordinarily buried, but offered to inter him in the portion allotted to criminals without religious rites. It seems that the agent of the widow offered to accept burial in the larger part, without religious rites, but this was refused. The remains of Guibord were, therefore, temporarily deposited in the vault of the Protestant cemetery.

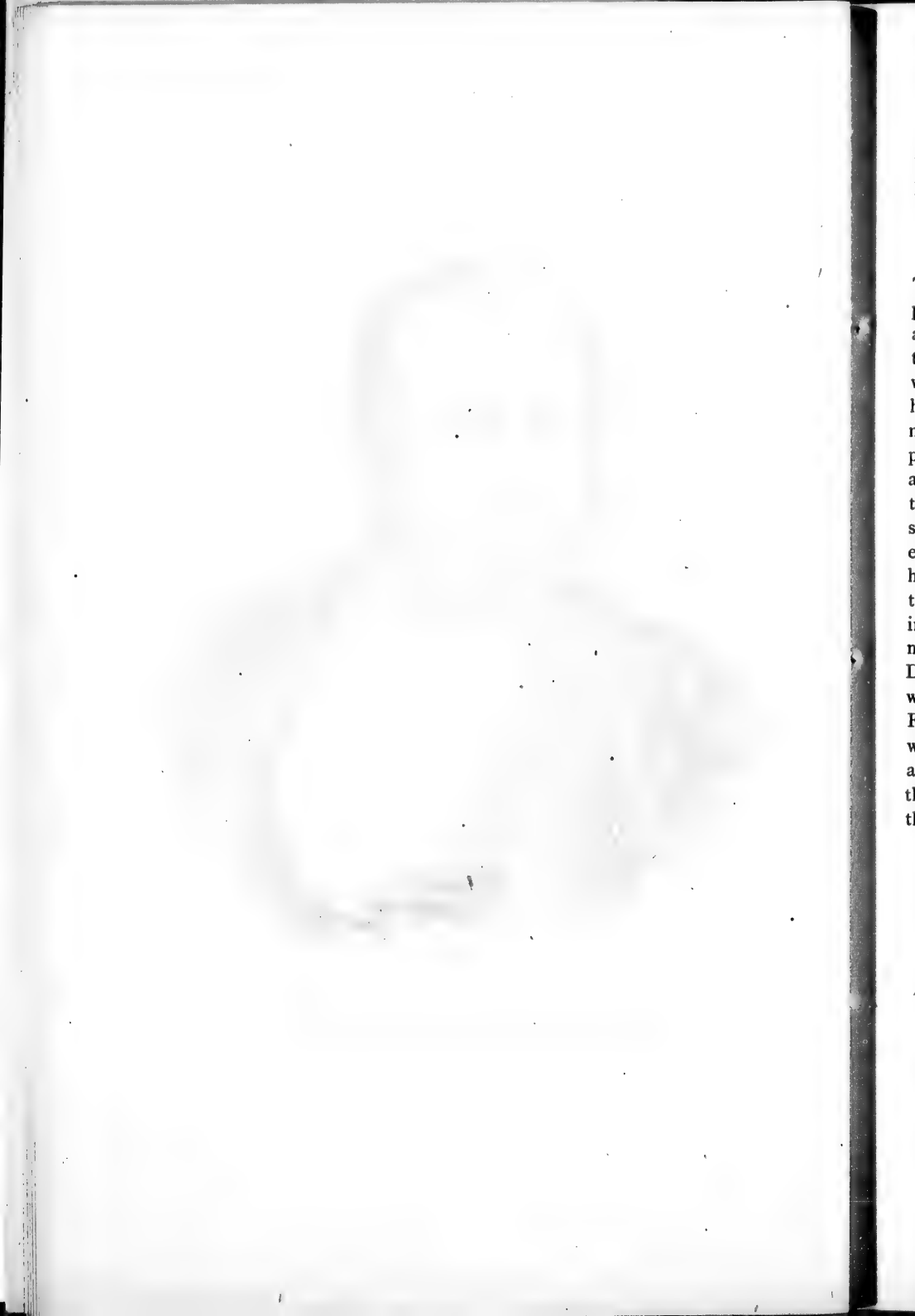
THE WIDOW INVOKES THE LAW.

This refusal of the Church authorities to allow Guibord Christian burial aroused the liveliest sympathy of the members of the Institute for the widow. Messrs. Joseph Doutre and R. Laflamme espoused her cause, and upon her behalf proceedings were instituted in the Superior Court to compel the Church authorities to bury the body in the consecrated portion of the cemetery. A writ of mandamus was applied for to this effect. Seventeen days were occupied in arguments, which were heard before Mr. Justice Mondelet. It was contended on the part of the Fabrique that by the terms of the cession of Canada to Great Britain the worship of the Roman Catholic religion was to remain free from all interference from the civil authorities. On the other hand it was contended that the right to an ecclesiastical burial was a civil right which the Church could not deny.

Judge Mondelet, in an elaborate opinion, sustained the cause of the applicant, and quoted the opinion of Sir George Cartier to show that the Curé of the parish of Notre Dame could be constrained by judgment of the courts to solemnize baptisms, marriages and burials in which his parishioners were concerned. The Judge ordered a peremptory writ of mandamus to issue, commanding the Curé and Fabrique to bury the deceased within six days. From this decision the Church authority appealed to the Court of Review, consisting of Judges Berthelot, Mackay and Torrance, who reversed the decision of Judge Mondelet, and dismissed the application upon the technical ground that the action should have been brought against the Curé personally, and because the writ was informal. An appeal to the Court of Queen's Bench, appeal side, was then taken by the widow. At the opening of the December term of this Court, Mr. Doutre challenged the four Roman Catholic judges, on the ground that, if faithful adherents of their Church, by its teachings in the Syllabus and otherwise, they could not do justice in any case where there is a conflict between the civil and ecclesiastical laws such as the one under consideration. When the last day of the term arrived, the five judges (the Protestant judge being Mr. ex-Justice Badgley) declared the petitions inadmissible, inasmuch as the charges contained in



JOSEPH DOUTRE, Q.C.—(See page 128.)



them amounted to accusations against the judges of treason and perjury, whereupon Mr. Doutre moved for an

APPEAL TO HER MAJESTY'S PRIVY COUNCIL.

The appeal to England involved a heavy expense. The Institut Canadien contributed \$1,000 for that purpose, and various private citizens of Montreal, Catholic and Protestant, generously contributed the means to prosecute the case before the Privy Council. In the meantime Guibord's widow was distracted at what she regarded as a dishonor to her husband's memory, and by her vain attempts to secure his remains Christian burial. She was, moreover, surrounded by people who tried to persuade her that if she had recourse to law against the clergy, there would be no salvation for her. Finally the unhappy woman's reason almost gave way, and soon after she died, March 24th, 1873. By her will she devised her property to the Institut Canadien, and also appointed that body as her universal legatee. Leave was granted by their Lordships of the Privy Council to the Institut Canadien to continue the case in her behalf. The case came formally before the Judicial Committee of the Privy Council on the 27th of June, 1874. Mr. Doutre had proceeded to England to represent the Institute, and with him was associated H. M. Bompas, Esq., as counsel, Messrs. Few & Co. acting as solicitors. The counsel for the Fabrique were Mr. L. A. Jetté, of Montreal, and Messrs. Westlake, Q. C., and Matthews, of London, Messrs. Morris, Ashurst & Co. being their solicitors. Mr. Doutre, however, is the only member of the Canadian Bar who participated in the argument in London.

III.

GUIBORD'S FIRST FUNERAL.



The first scene in this historical drama opens with the funeral of Joseph Guibord, who died suddenly of paralysis on Thursday evening, November 18th, 1869. An inquest was held on the body, and the usual certificate sent by the Coroner to Mr. Rousset, curate in charge of the Parish. The following morning the friends of the deceased went to the Seminary to have the death registered, to arrange for the usual service for the dead, and to obtain an order for interment in the Roman Catholic Cemetery. The officer in charge refused to register the death or to give any order for interment. The usual service was also refused. The reason for this, distinctly and unequivocally given, was that the deceased was a member of the Canadian Institute, it being further stated that orders had been issued that no member of that institution was to receive any of the rites of the Church. As Mr. Guibord had been a consistent adherent of the Roman Catholic Church, had fulfilled all the duties required of its members, during the whole of Lent and on Fridays abstaining from meat as ordered, was a pew-holder in St. Peter's Church, and a member of two societies under the control of the priests, and to which only Roman Catholics were admitted as members, the friends thought there must be some misconception. One of his relatives, therefore, went to the Seminary and asked for an order to have deceased buried in a lot belonging to the applicant, but he was told this would not be given. To put an end to all doubt on the subject, the widow gave a written order to three gentlemen to act for her, who were to use every means to obtain permission to have the body interred in consecrated ground. Armed with this, they called on the Rev. Mr. Rousset, and formally asked him to give the order. This was again refused. They then demanded of him in his capacity as a public officer, to give Joseph Guibord interment, who was born a Catholic, baptized and married in the Roman Catholic Church, and

had always been a Catholic up to the hour of his death. The only answer to this was that he had received orders from the Vicar-General to that effect; and he produced the letter, which stated that "no member of the Canadian Institute was to have the sacraments of the Church administered, to receive the last rites, to have funeral services performed, or to obtain interment in the Catholic cemetery." The friends then made a legal tender of the fees usual in such cases, which Mr. Rousselot offered to accept, but said that the body could not be interred in the lot. A request was then made that the body should be allowed to be deposited in the vaults, but no answer could be returned till the matter had been referred to the Grand Vicar. On the return of the friends for an answer, the curé was present with a witness, and said they must understand that interment was not refused, but that the body of Guibord must be buried in a lot set apart for the burial of unbaptized children, suicides and people unrecognized by the Church. This was declined by the friends, and a notarial protest was served on the Fabrique.

On Sunday, Nov. 21st, about two hundred and fifty friends and sympathizers of deceased met at his late residence in St. Urbain street, to accompany the body to the Catholic cemetery. The hearse was one used by Protestants, and at the gate the coffin was taken out and conveyed on a sleigh to the chapel. The representative of the Fabrique was then required to inter the body, and a legal tender was made to him of the fees; but he declined to receive them, acting, he said, under instructions from the Fabrique. He would, however, bury the body, if they chose, in the strangers' lot, an unconsecrated piece of ground, rough and neglected, and where, as the superintendent informed them, suicides, &c., were buried. In reply to further enquiries, he said criminals, executed without having made their confession, were interred there, but that Beauregard and Barreau, murderers of the foulest sort, were laid in consecrated ground, as before death they had made their peace with the Church. Seeing that further attempts would be useless, the body was again placed in the hearse, and now taken to the English cemetery, and there placed temporarily in a vault. Before being placed there, short addresses were delivered by Messrs. Joseph Doutre, Q. C., V. P. W. Dorion, C. Ovide Perrault, and J. A. Perkins.

IV.

EARLY LEGAL PROCEEDINGS.

TESTIMONY OF REV. MR. ROUSSELOT AND HON. MR. DESSAULLES

Madame Guibord, acting under advice of several prominent members of the Institute, brought a suit before the Superior Court to compel the Fabrique to accord burial to Guibord's remains in his own lot in consecrated ground. Messrs. Joseph Doutre, Q. C., and R. Laflamme, both members of the Institute, were counsel for Madame Guibord, while Messrs. L. A. Jetté, J. L. Cassidy, and F. X. Trudel represented the Fabrique.

On January 18th, 1870, Rev. Mr. Rousselot gave evidence in defence as follows :

Civil burial is never given except in the reserved part of the cemetery. No notice was given me that the body of Guibord would be brought to the cemetery on Sunday, 21st November last, in the afternoon, nor was any demand made on me to hold myself in attendance there that afternoon.

On January 19th, Hon. L. A. Dessaulles, for plaintiff, testified :

I have been since 1853 or '54, and am still, a member of the Canadian Institute. My acquaintance with the history of the difficulties between that body and Bishop Bourget dates only from January, 1863. In that month a pastoral of His Lordship was read in the Roman Catholic churches, condemning a lecture delivered by me before the Institute the previous month. In this pastoral occurs the following passage :—

"We will then pray that no evil may result to any one from that dreadful monster Rationalism, which has anew lifted up its hideous head in the Institute, and which seeks to spread the infectious poison in a pamphlet repeating the blasphemies uttered from that seat of pestilence."

The pamphlet herein referred to was the one which contained my lecture. With a view as well of justifying the Institute as of repelling so grave an attack against myself, I wrote in February following a respectful letter to the Bishop, asking His Lordship to indicate the blasphemous utterances in my pamphlet, that I might retract them. A second and a third letter remained, like the first, without an answer. Having obtained an interview with Mgr. Bourget, he refused, in terms wounding to my feelings, to comply with my request.

Wearied at last with being ever in bitter contest with the ecclesiastical authority, a committee was named by the Institute in 1863, of which I was a member, for the promotion of a better understanding between the Bishop and the Society. We waited on His Lordship, who received us cordially. The result of our interview was that, with His Lordship's permission, J. C. F. Papineau, Esq., and myself laid before him the catalogue of the library, that the books said to be dangerous might be designated thereon. The Bishop recognized, he said, in this step a proof of good intentions, and intimated to us that he would examine the catalogue and send us his answer when ready.

Seven months had passed and the answer had not come. Seeing the Bishop on the eve of departing for Europe, I repaired to the Palace on the evening of the 4th November, 1864, and learned from the Bishop that "he had not deemed it his duty to point out the said works," as, he said, it would "have led to no practical result." I asked how members were to act who sincerely wished to know what books the Church forbade them to read, and was told that such persons could address themselves to their confessors. I observed that if such was the remedy, the way to an arrangement was clear, for having offered to place the forbidden books in a separate department, that would be a sufficient indication to those who would not wish to read them without spiritual advice. I also observed that the bishops of France and other countries tolerated in their respective provinces libraries containing many more such books than did our library, and in respect of the possession of which their owners were never troubled on their dying bed. His Lordship said that he was not free to ignore the injunctions of the Church, and on my remarking that these laws were everywhere interpreted with

more liberality than by His Lordship, the latter replied that he had his duty to perform and he would perform it. I said those bishops drew distinctions between the classes of books placed in the Index, and said that as to works of an obscene nature, we did not pretend to the right of possessing them. I cited works of political economists which we had at the Institute, and which were on the Index, and asserted that the study of them was absolutely necessary to one in political life. In like manner, I continued, there are historical works in the Index, without reference to which a professor of history could not properly teach that branch. His Lordship finally said: "I prohibit all the Church prohibits. Does the Church forbid a thing? That is all I look to. Does she condemn the economists? We must do without them. I administer my diocese as I understand it." He then returned me the catalogue without having specified the objectionable books.

The best theologians in Montreal were then consulted with as to the course we should take. They also took counsel of a foreign priest of high distinction, who chanced to be in the city at the time. They united in saying that an appeal to the Holy See became necessary under the circumstances. Agreeably to their advice, a humble petition was addressed to His Holiness Pius IX., and signed by seventeen Catholic members of the Institute, among whom was Guibord.

No decision has ever been rendered on this appeal. When the Bishop's pastoral, enclosing the two decrees therein mentioned, was read in this city, the members of the Institute who had appealed to the Holy See took in at a glance the change of tactics adopted by the Bishop. Eminent theologians were again consulted, and again following their instructions, we decided to accept, purely and simply, the decree of the "Congregation of the Index," condemning the *Annuaire* of 1868. But as the other decree, that of the "Roman Inquisition," was erroneous in point of fact, inasmuch as it affirmed the actual "teaching by the Institute as a body of the opinions expressed in the *Annuaire*," we concluded that this could be owing only to the fact that our adversaries had alone been heard before that tribunal. The latter never afforded the Institute an opportunity of contradicting the accusation, and we consequently felt ourselves constrained to

withhold that submission to the decree of the "Inquisition" which we yielded to that of the Congregation of the Index. A memoir embodying our reasons for not submitting to the said decree was drawn up by some Catholic members for transmission to Cardinal Barnabo, Prefect of the Propaganda at Rome.

DR. CODERRE'S EVIDENCE.

Dr. Joseph Emery Coderre was examined as to the history of the difficulty which resulted in the refusal of burial to Guibord, and stated that it began with a proposition to exclude the *Semeur Canadien* and *Witness* from the Canadian Institute; and another, that all religious papers should be excluded, both of which propositions were rejected.

When the two decrees of Rome were published last year in the churches concerning the Canadian Institute, a committee was appointed to consider and suggest what could be done to satisfy these decrees, the members of which consulted with influential clergymen and upon their suggestions that committee adopted the following resolutions:—

1st. That the Institut Canadien, founded exclusively for literary and scientific purposes, has no kind of doctrinal teaching, and carefully excludes all teaching of pernicious doctrines.

2nd. That the Catholic members of the Institut Canadien, having learned the condemnation of the year book of the Institution for 1868, by decree of Roman authority, submit purely and simply to that decree.

Mr. Justice Mondelet, before whom the application for burial was made, and the above evidence adduced, decided in favor of the widow, ordering the burial to take place in Guibord's lot. The Fabrique appealed to the Court of Review, who reversed the decision of Judge Mondelet. The widow then appealed to the Court of Queen's Bench (appeal side), in the opening of the December term in 1870.

V.

RECUSATION OF THE JUDGES.

This Court was composed of five judges, viz: Duval, Caron, Monk and Drummond, Roman Catholic; and Badgley, Protestant. At the opening of the Court, on December 2nd, Mr. Joseph Doutre, Q. C., counsel for the plaintiff, challenged the four Roman Catholic judges on the ground that they belonged to a Church which had, by the Syllabus of 1864, declared that the State possessed no authority, even indirectly, over matters of religion, and that in case of conflict between the civil and ecclesiastical authority, the former must yield.

"By means of a strong pressure on public opinion in this Province," said Mr. Doutre, "many persons are not sure whether our judges are the representatives of Her Majesty and the laws made under her authority and that of her predecessors, or whether, in certain matters, they are governed by a religious authority, the seat of which is at Rome." Here the Hon. Chief-Justice interrupted Mr. Doutre to tell him that he attributed too much importance to the imbeciles who expressed such doubts in the matter.

"Unfortunately," rejoined Mr. Doutre, "we meet those imbeciles at every turn, and as the judges themselves have not defined their position, we are brought to this point, that their decisions will often rest without moral authority. The judges cannot express their opinion except upon a case before them, and this case offers an occasion, the like of which may not occur again, to put an end to the injurious doubts which are entertained as to their independence, and as to their true position with regard to the sovereign who appoints them, and another sovereign who pretends to command their conscience, to circumscribe their authority and to cast defiance at that of our Queen, our parlia-

ments and our laws. I have not the slightest doubt," said Mr. Doutre, "that the declarations which your Honors will make, in obedience to the law, will enable me to withdraw my challenge, which I will be very happy to do."

The petition in recusation set forth the following causes, among others :—"Because the said Honorable Judge is a Roman Catholic, owing an allegiance to an authority sitting at Rome, Italy; and that this Roman authority imposes as a dogma upon its members the duty of maintaining the supremacy of the said authority over that of all sovereigns, including Her Majesty the Queen of Great Britain and Ireland and of this country.

Because the authority to which the Honorable Judge bears allegiance, directs him in conscience and under pain of anathema and excommunication, to ignore the following dispositions of Chap. 84, 14 George III., (1774), thus reported in the Consolidated Statutes of Canada :—"And for the greater surety and peace of mind of the inhabitants in the said province, (Quebec), it is by these presents declared that the subjects of His Majesty professing the religion of the Church of Rome (namely, the Roman authority above mentioned), in the said Province of Quebec, may preserve and enjoy the free exercise of the religion of the Church of Rome, *subject to the supremacy of the King.*" And the decrees, orders and injunctions emanating from said Roman authority, promulgated since the cession of Canada to Great Britain, and the aforesaid statute, declare that the following propositions cannot be admitted :—

1. That it belongs to the civil power to define the rights of the Church and the limits within which they may be exercised. (Art. 19 of the Syllabus promulgated by the encyclical of December 8, 1864).

2. The ecclesiastical power ought not to exercise its authority without the assent and permission of the civil government (Art. 20.)

3. In case of conflict between the two powers the civil power shall prevail. (Art. 42).

4. The civil authority may interfere in matters relating to religion, morals and spiritual discipline. (Art. 44).

5. In the present age it is no longer fitting that the Catholic

religion should be considered as the sole religion of the State, to the exclusion of all other religions. (Art. 47).

"6. The Church has no right to employ force, and has no temporal power, direct or indirect. (Art. 24).

"Because the said Roman authority, which anathematizes and excommunicates those who believe or practice any of the above mentioned doctrines, has been declared infallible and as speaking with as much authority as God himself to the conscience of Roman Catholics, and notably to that of the said Honorable Judge.

"Because the said Honorable Judge cannot render justice to the appellant and condemn the defendants without violating each and all of the propositions thus promulgated by the said Roman authority.

"The Hon. Chief-Justice Duval ordered the clerk to receive the petition, but to register nothing without having received special instructions."

PETITION IN RECUSATION DISALLOWED.

On the 9th December the Court rendered judgment on Mr. Doutre's petition as follows:—

"The Court refuses to allow petition in recusation of the four judges to be received or fyled (Drummond J., dissenting partially). Petition stigmatized as insulting to the judges recused and to the Bench, and is regarded by the Court as amounting simply to charges of treason and perjury against the judges recused."

Badgley J., in rendering judgment, remarked that he stood in a singular position, as being the only Judge of those composing the Court at the time the petition was presented who was not recused. The petition was addressed to the Court of Queen's Bench, sitting in Appeal in the District of Montreal, which was composed on the day of presentation of only four judges, His Honor Judge Drummond having been absent, and who expressed his determination, in consequence, not to take part in the decision of the matter. The petition presented by the appellant called upon the said Court of Queen's Bench to take notice that three of the judges composing the then Court—the Chief Justice, Judges Caron and Monk—were recused from sitting in judgment upon his demand, and a great number of

grounds, all more or less connected with ecclesiastical affairs and certain declarations of the Head of the Romish Church, are alleged in support of the pretensions of the petitioner appellant, the substance of which is that the Head of the Church of Rome has promulgated certain doctrines which destroy all authority of the Queen, constitution, and of our public law. In argument the counsel referred to the Act of Supremacy which, he asserted, was overridden and set aside by these late enunciations of the Romish Church. But His Honor said he would not enter into a discussion of this argument, nor did he feel himself called upon to do so, or to say whether, or to what extent these religious theories would affect the judgment or opinions of his colleagues, or of Roman Catholics in this Province. The laws and constitution of the country are to be chiefly looked at in determining this matter; and the main question is to determine whether the impartiality or justice of the Bench would be affected by the doctrines referred to in the present case, in which the respondent is a portion of the religious body itself. As the substance of the petition is to accuse the judges recused of treason and perjury, it is necessary to examine carefully *in limine* whether such a petition can be received at all by Court.

In support of the pretension that the authority of the Queen was superseded and overridden, ecclesiastical law was resorted to; but His Honor was of opinion that it was outside of the present matter, which should be determined according to the jurisprudence of the country. • To allow the grounds of the petition to be true would be simply an acknowledgment of treason to the civil ruler and perjury on the part of the judges recused. an admission which it could not be expected the judges would make. Nor did His Honor think there was ground for the charges. A petition containing such monstrous charges could not, in His Honor's opinion, be received by the Court, and was inadmissible and could not be fyled. His Honor was clearly of opinion that the judges recused could decide on the admissibility of the petition in recusation, and could reject it if it contained matters which subjected it to rejection, and cited authorities to sustain his opinion; amongst others that of the late Chief-Justice Stuart and Justice Panet, in a case decided in the Court of Queen's Bench, Quebec; and, in concluding, His Honor said he felt there

could be no doubt that such a paper is not admissible, and shall not be put upon the fyles of the Court.

Drummond J., in explanation of his position, said he did not regard the petition as having been fyled, and that, therefore, he was not recused. He differed from his *confrères* as to the power of the judges recused to determine the admissibility of the petition. He considered the petition could not be fyled of right without permission, and quoted many authorities to sustain his position. In indignant language he characterized the petition as monstrous and insulting to the judges recused and to the Bench, and thought it was rightly rejected as inadmissible, containing none of the grounds of recusation recognized by the Code of Civil Procedure, which His Honor relied on as being the law of the land, superior to all decisions previous to its date.

Judge Caron and Chief-Justice Duval also concurred, and in strong terms condemned the proceeding as insulting and unheard of.

Mr. Doutre, Q. C., immediately moved for permission to appeal to Her Majesty's Privy Council from this judgment, and a rule was allowed, returnable the first day of next term.

VI.

JUDGMENT OF THE PRIVY COUNCIL.

In November, 1874, their Lordships of the Judicial Committee of the Privy Council gave the following very able and elaborate judgment. Amongst the many cases that have gone before that august tribunal on appeal from Canada, none has created more interest in England than the Guibord case, and upon no other case have their Lordships bestowed more care, or exercised with more impartiality, the resources of their great learning.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Dame Henriette Brown v. Les Curé et Marguilliers de l'Œuvre et Fabrique de Notre-Dame de Montréal, from Canada; delivered 21st November, 1874.

Present :

LORD SELBORNE.
SIR JAMES W. COLVILLE.
SIR ROBERT PHILLIMORE.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

This is an appeal from a Judgment of the Court of Queen's Bench for the Province of Quebec, in Canada, confirming a Judgment of the Court of Review, which latter reversed a Judgment of the Superior Court in First Instance.

The question which was the subject of these different Judgments related to the burial of the remains of Joseph Guibord, one of Her Majesty's Roman Catholic subjects, who died at Montreal, on the 18th of November, 1869.

His widow and representative, Dame Henriette Brown, insti-

tuted and prosecuted the suit in the Canadian Courts, and was also the original Appellant before their Lordships. She died on the 24th of March, 1873, and by her will devised her property to the "Institut Canadien," and also appointed them her universal legatees.

This Corporation, having accepted the appointment, applied for leave to continue this Appeal, which leave was granted by their Lordships, on the 26th of June, 1873.

This leave was granted without prejudice to any question which might be raised as to the competency of the Institute to continue the Appeal. It appeared that the widow had been condemned in the costs in the Canadian courts, and her universal legatees were therefore, of course, interested in procuring the reversal of these sentences; and the objection to their competency, though mentioned in the "Reasons" of the Respondents, was not insisted upon in the arguments before us.

The suit on behalf of the representative of Guibord was for a *mandamus* to "Les Curé et Marguilliers de l'Œuvre et Fabrique de Montréal," upon receipt of the customary fees, to bury his body in the parochial cemetery of members of the Roman Catholic Church at Montreal, entitled the "Cemetery of La Côte des Neiges," conformably to usage and to law, and to enter such burial in the civil register.

"La Fabrique de Montréal" is the corporation consisting of the Curé and certain lay church officers called "Marguilliers," whose relation to the church and churchyard is analogous to that of churchwardens in an English parish. This corporation manages the temporalities of the church, which temporalities are also sometimes designated by the title of "La Fabrique."

"La Fabrique de Montréal" had the control of this particular cemetery.

The cemetery is divided into two parts, the smaller part being separated from the larger by a paling. In the smaller part, are buried unbaptized infants and those who have died "sans les secours ou les sacrements de l'Eglise;" and (as appears from the evidence) persons who had committed suicide, and criminals who had suffered capital punishment without being reconciled to the Church. In the other and larger part are buried ordinary Roman Catholics in the usual way, and with the rites of the Church.

Neither portion of the cemetery is consecrated as a whole ; but it is the custom to consecrate separately each grave in the larger part, never in the smaller or reserved part.

The cemetery is thus practically divided into a part in which graves are, and into a part in which they are not, consecrated.

The circumstances which led to this litigation were as follows :—

Guibord was a lay parishioner of Montreal. He appears to have been of unexceptionable moral character, and to have been, both by baptism and education, a Roman Catholic, which faith he retained up to the time of his death.

In the year 1844, a literary and scientific institution was formed at Montreal for the purpose of providing a library, reading-room, and other appliances for education. It was incorporated by a Provincial Statute (16 Vict., c. 261), under the name of the "Institut Canadien."

The preamble of this Statute recites :—

"Whereas several persons of different classes, ages, and professions, residing in the city of Montreal and elsewhere, have formed a literary and scientific association in the said city, under the name of the 'Institut Canadien,' for the purpose of establishing a library and reading-room, and of organizing a system of mutual and public instruction by means of lectures and courses of instruction."

It then states that the number of members already exceeded 500, that they had a library of 2,000 volumes, and a reading-room provided with newspapers and periodical publications. Then follows a prayer to be constituted a legal corporation. The prayer was granted by the Legislature, and the statute incorporates the Association, and directs, among other provisions, that the corporation is to make an annual return to the Government of their estates real and personal.

Guibord was one of the original members of this Institute.

In the year 1858, certain members of the Institute proposed a Committee for the purpose of making a list of books in the library, which, in their opinion, ought not to be allowed to remain therein.

An amendment, however, was carried by a considerable majority to the effect that the Institute contained no improper books, that it was the sole judge of the morality of its library, and that the existing Committee of Management was sufficient.

On the 13th of April in the same year, the Roman Catholic Bishop of Montreal published a pastoral, which was read in all the churches of his diocese, in which he referred to what had taken place at the meeting of the Institution, and after praising the conduct of the minority, pointed out that the majority had fallen into two great errors: first, in declaring that they were the proper judges of the morality of the books in their library, whereas the Council of Trent had declared that this belonged to the office of the Bishop; secondly, in declaring that the library contained only moral books, whereas it contained books which were in the Index at Rome. The Bishop further cited a decision of the Council of Trent, that any one who read or kept heretical books would incur sentence of excommunication, and that any one who read or kept books forbidden on other grounds would be subject to severe punishment; and he concluded by making an appeal to the Institute to alter their resolution, alleging that otherwise no Catholic would continue to belong to it. He says:—

“Car il est à bien remarquer ici que ce n'est pas nous qui prononçons cette terrible excommunication dont il est question, mais l'Eglise dont nous ne faisons que publier les salutaires décrets.”

The resolution of the Institute was not rescinded.

In 1865 several of the Roman Catholic members of the Institute, including Guibord, appealed to Rome against this pastoral.

They received no answer to their application. But in the year 1869 the Bishop of Montreal issued a circular—

“Publiant la réponse du Saint Office concernant l'Institut Canadien et le Décret de la Sainte Congrégation de l'Index condamnant l'Annuaire du dit Institut pour 1868.”

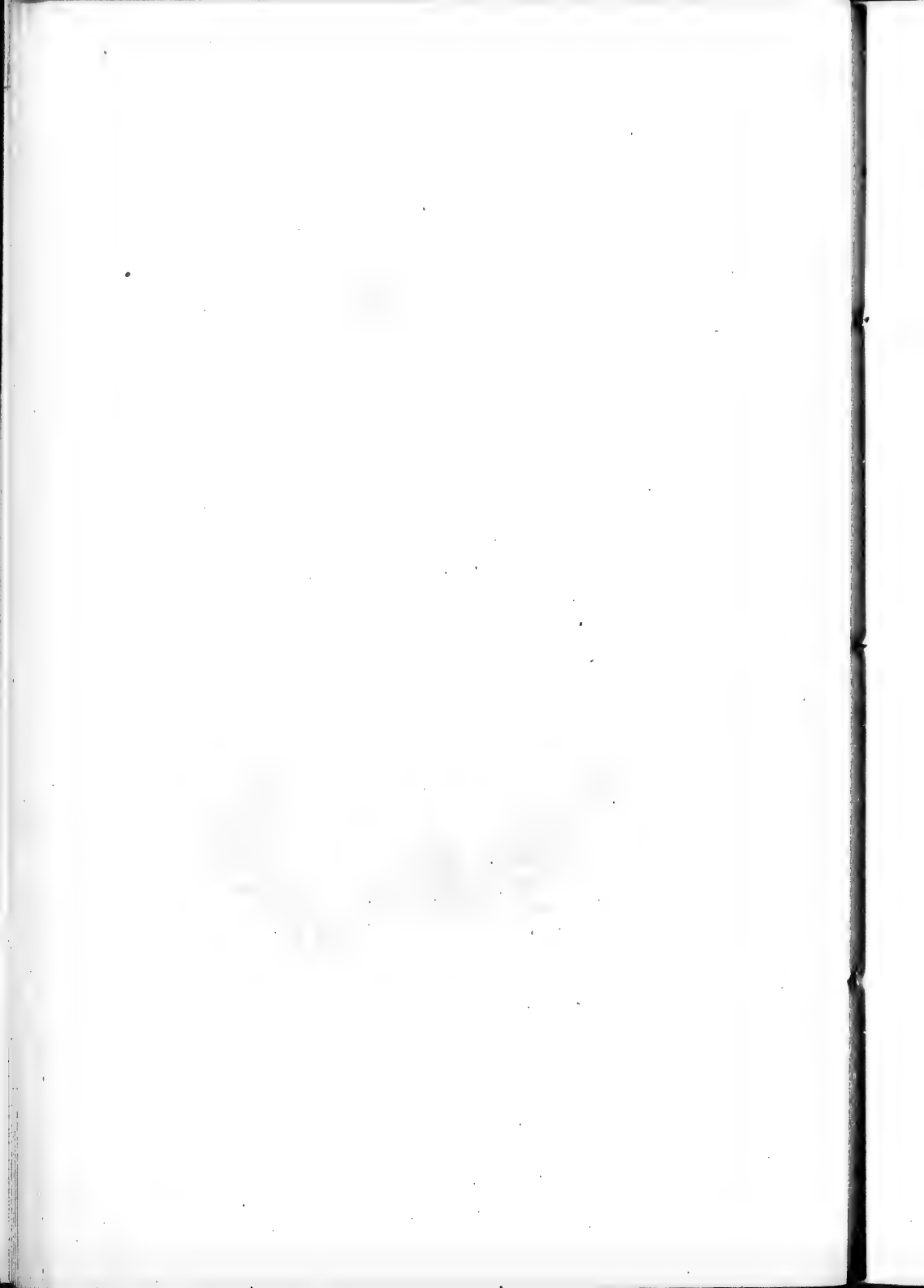
This circular was dated from Rome, 16th July, 1869. He also sent a pastoral letter from Rome dated in August of that year, which contained two enclosures; one the sentence or answer of the Holy Office, as printed in the case before us:—

“Illme. ac Rme. Dne.

“Cum in Generali Congregatione S.R. et U.I. habita feria IV. die 7 curr. Emi. ac Rmi. Generales Inquisitores jamdiu motam de Instituto Canadensi controversiam ad examen revocassent, singulis mature ac diligenter expensis, A tuæ significandum voluerunt, rejiciendas omnino esse doctrinas in quodam annuario quo dicti Instituti acta recensentur, contentas, ipsasque doctrinas ab eodem



JOSEPH GUIBORD.—(See page 133.)



Instituto traditas prorsus reprobandas. Animadvertentes insuper laudati Emi. ac Rmi. Patres valde timendum esse ne per hujusmodi pravas doctrinas Christianæ juventutis institutio et educatio in discrimen adducatur, dum commendandum expresserunt zelum ac vigilantiam a te huc usque adhibitam excitandam eandem [the next word is a misprint] jusserunt, ut una cum tuæ dioceseos clero omnem curam conferas, ut Catholici ac præsertim juvenus a memorato Instituto, quousque perniciosas doctrinas in eo edoceri constiterit, arceantur. Dum vero laudibus prosequuti sunt alteram societatem *Institutum Canadense Gallicum* nuncupatam, nec non ephemeridem dictam "*Courrier de St. Hyacinthe*," utramque fovendam adjuvandam que mandarunt ut ita iis damnis ac malis remedia quaerantur, quæ ex alio præfato Instituto haud dimanare non possunt. Quod a tuæ pro mei muneris ratione communicans omni cum observantia maneo.

"Romæ ex Æd. S.C. de P.F. die 14 Julii, 1860, &c."

The other inclosure was a *Decretum* of the "Congregatio," to whom the care of the Index was committed, it was as follows:—

"Decretum.

"Feria II, die 12 Julii, 1869.

"Sacra Congregatio Eminentissimorum ac Reverendissimorum Sanctæ Romanæ Ecclesiæ Cardinalium a SANCTISSIMO DOMINO NOSTRO PIO PAPA IX. sanctaque Sede Apostolica Indici librorum pravæ doctrinæ, eorumdemque proscriptioni, expurgationi ac permissioni in universa Christiana republica præpositorum et delegatorum, habita in Palatio Apostolico Vaticano, die 12 Julii 1869 damnavit et damnat, proscribit proscribitque, vel alias damnata atque proscripta in Indicem Librorum Prohibitorum referri mandavit et mandat opera quæ sequuntur."

Then the names of several works unconnected with the Institute are mentioned. And then—

"Annuaire de l'Institut Canadien pour 1868, célébration du 24^{ème} anniversaire de l'Institut Canadien le 17 Décembre, 1868. (*Decr. S. Officii Feria IV, die 7 Julii 1869.*

"Itaque nemo cujuscumque gradus et conditionis prædictæ opera damnata etque proscripta, quocumque loco, et quocumque idiomate, aut in posterum edere, aut dita legere vel retinere audeat, sed locorum ordinariis, aut hæreticæ pravitate inuisitoribus ea tradere teneatur, sub pœnis in Indice librorum vetitorum indictis.

"Quibus SANCTISSIMO DOMINO NOSTRO PIO PAPÆ IX. per me infrascriptum S.I.C. a Secretis relatis SANCTITAS SUA decretum probavit, et promulgari præcepit. In quorum fidem, &c."

"Datum Romæ, die 16 Julii, 1869.

The pastoral letter containing this enclosure drew attention to the fact that two things were especially forbidden by this Decretum:—1. To belong to the Institute while it taught pernicious doctrines. 2. To publish, retain, keep or read the "Annuaire,"

of 1868. And the Bishop also pointed out that any person who persisted in keeping or reading the "Annuaire," or in remaining a member of the Institute, would be deprived of the Sacrament, "même à l'article de la mort."

The Institute held a meeting on the 23rd September, 1869, and resolved:—

"1. Que l'Institut Canadien, fondé dans un but purement littéraire et scientifique, n'a aucune espèce d'enseignement doctrinaire, et exclut avec soin tout enseignement de doctrines pernicieuses dans son sein.

"2. Que les membres Catholiques de l'Institut Canadien, ayant appris la condamnation de l'Annuaire de 1868 de l'Institut Canadien par décret de l'autorité Romaine, déclarent se soumettre purement et simplement à ce décret."

These concessions produced no effect.

The Bishop in a letter, the last which appears in the case, dated Rome, 30th October, 1869, to the Administrator of the Diocese at Montreal (which that officer received, he says, on the 17th November, the day before Guibord's death), denounces these concessions as hypocritical, and gives five reasons why they are insufficient, the third of which is—

"3. Parceque cet acte de soumission fait partie d'un rapport du comité approuvé à l'unanimité par le corps de l'Institut, dans lequel est proclamé une résolution tenue jusqu'alors secrète, qui établit en principe la tolérance religieuse qui a été la principale cause de la condamnation de l'Institut.

The letter concludes—

"Tous comprendront qu'en matière si grave il n'y a pas d'absolution à donner pas même à l'article de la mort, à ceux qui ne voudraient pas renoncer à l'Institut, qui n'a fait qu'un acte d'hypocrisie, en feignant de se soumettre au Saint Siège."

It is right to observe here that this "principal ground of condemnation" of the Institute, viz., that it had passed a resolution which established the principle of religious toleration, was entirely new, does not appear in any former document, and further, it would seem, could not have been known by Guibord.

It should also be mentioned, in order to complete the necessary history of the case, that Guibord, about six years before his death, being dangerously ill, was attended by a priest, who administered unction to him, but refused to administer Holy Communion unless he resigned his membership of the Institute, which Guibord declined to do.

Guibord having died, as has been stated, on the 18th November, 1869, suddenly, of an attack of paralysis, on the 20th of

November, the widow caused a request to be made on her behalf to the Curé and to the Clerk of the Fabrique, to bury Guibord in the cemetery, and tendered the usual fees.

Previously to this application M. Rousselot, the Curé, having heard of the death of Guibord, and knowing that he was a member of the Institute, had applied to the administrator of the diocese for his directions. He replied that he had yesterday received a letter from the Bishop of Montreal, directing him to refuse absolution "même à l'article de la mort" to members of the Institute; he could not, therefore, permit "la sépulture ecclésiastique" to Guibord. The Curé having received the letter, refused to bury Guibord in the larger part of the cemetery, where Roman Catholics were ordinarily buried, but offered to allow him interment in the other part, without the performance of any religious rites.

It seems that the agent of the widow offered to accept burial in the larger part without religious services; but this offer was rejected.

On the 23rd of November, the widow presented a petition to the Superior Court, setting out the facts and prayed that a mandamus might issue as above stated.

On the 24th, one of the judges of the Superior Court ordered a writ of mandamus to issue, but it must be observed that the writ issued was a writ of summons calling upon the defendants to appear and answer the demand which should be made against them by the plaintiff for the causes mentioned in the said petition thereto annexed. The proceeding was in substance the same as a rule to show cause why a writ of mandamus should not be issued. The defendants appeared and filed a petition praying that the writ might be annulled for irregularity, upon the ground that it was a writ of summons and not a writ of mandamus, and also upon other technical objections. The defendants, at the same time, filed a traverse of the plaintiff's petition and three pleas. The first plea was to the same effect as the petition of the defendants, and set up the same alleged grounds of irregularity, and pointed out the same defects as those mentioned in that petition.

The second plea in substance denied that the respondents had refused to bury the deceased, and alleged that they were entitled to point out the place in the cemetery where he should be buried,

and that they were ready to do so, and to give him such burial as he was entitled to.

The third plea averred that the service (*culte*) of the Roman Catholic religion in Canada is free, and the exercise of its religious ceremonies of whatever nature is independent of all civil interference or control; that, for the purpose of assuring the freedom of that religion, the law recognizes the respondents as proprietors of the Roman Catholic parish church of Montreal, and of its parsonage, cemeteries, and other dependencies, which are all Roman Catholic, devoted to the exclusive use and exercise of that religion, and subject to the exclusive control, and management of the respondents and of the superior Roman Catholic ecclesiastical authority; that the respondents, in such capacity, had, for more than ten years, been proprietors and in possession of the Roman Catholic cemetery in question, and are empowered by law to point out the precise spot in the cemetery where each burial is to be made; that, besides their above mentioned capacity, the respondents are also civil officers within certain limits, having to fulfil certain duties defined by law, and are legally responsible in that capacity and sphere only; that the respondents, in their double capacity thus existing, are by the Roman Catholic religious authority and by the law, set over the burial of persons of the Roman Catholic denomination dying in the parish of Montreal, and are responsible to the religious and civil authorities respectively for the religious and civil portions of such functions; that the respondents for the execution of their double duty, and in accordance with the immemorial custom of the Roman Catholic parishes throughout the country, have assigned one part of the cemetery for the burial of persons of Catholic denomination and belief who are buried with Roman Catholic religious ceremonies, and other part for the burial of those who are deprived of ecclesiastical burial; that Joseph Guibord was a member of a literary society at Montreal, called the Canadian Institute, and as such was at the time of his death and had been for about ten years previous notoriously and publicly subject to canonical penalties resulting from such membership and involving deprivation of ecclesiastical burial; that immediately after the death of Joseph Guibord, the Rev. Victor Rousselot, Roman Catholic priest, and curate of the parish of Montreal, submitted the question of his

religious burial to the Rev. Alexis Frédéric Truteau, Vicar-General of the Roman Catholic diocese of Montreal, and administrator of the diocese, with supreme ecclesiastical authority therein, in the absence of the Bishop, by virtue of the rescript of the Pope, dated 4th October, 1868; and that the said administrator replied by a decree declaring that, since Joseph Guibord was a member of the Canadian Institute at the time of his death, ecclesiastical burial could not be granted to him; that the plaintiff, by her agents, having required M. Rousselot and the respondents to give to the body both religious and civil burial in the cemetery in question, they repeatedly informed the said agents of such decree of the administrator of the diocese, and that in consequence thereof ecclesiastical burial could not be granted and was refused, but that they were ready as civil officers to bury the remains civilly, and authenticate the death according to law, which offer was never accepted by the plaintiff or her agents, and that, having regard to the above facts, the plaintiff could not claim from the respondents for the remains of her late husband more than civil burial, and that under the conditions laid down by the ecclesiastical laws of the Roman Catholic Church, which the respondents had never refused. The plea then concluded by saying that the respondents had refused nothing but ecclesiastical burial, for the refusal of which they were responsible only before the religious and not before the civil authority.

The widow filed several answers to these pleas, some in the nature of demurrers, some of traverses of the facts alleged, and to the third plea also a special answer, setting out the facts with respect to the dispute between the Institute, the Bishop, and the Court of Rome,—which have been already mentioned.

The respondents joined issue on these answers, and also by leave of the Court, filed a special replication to the petitioner's third answer to the respondent's third plea; in which, after repeating that the Civil Courts were incompetent to question a decision of the ecclesiastical authorities on ecclesiastical matters, and could not enquire into the grounds upon which ecclesiastical burial had been refused to Guibord, they, nevertheless, cited the decrees of the Council of Trent with regard to the Index and the proceedings relating to the Institute, and concluded by an averment that, in consequence of the premises, Guibord at the same time of his

death must be considered as "un pécheur public," and as such, obnoxious to the canonical penalties imposed by the Roman Catholic ritual, among which was privation of sepulture.

That the members of the Institute having refused to obey the pastoral, and persisted in their refusal, "le jugement de l'Evêque imposant la peine canonique sus-mentionnée est demeuré en pleine force et effet."

It then avers, after stating the proceedings relating to an appeal to Rome, that the Administrator-General, taking into consideration all the facts relating to Guibord, "comme membre du dit Institut," had "justement rendu le décret qui l'a privé de la sepulture ecclésiastique," and further "que le décret, rendu dans la forme ou il se trouve, est d'ailleurs un décret nominal."

Issue was joined on this special replication.

It is to be noticed that in this replication it is for the first time alleged that on the ground of his being "un pécheur public," Guibord was disentitled to ecclesiastical burial.

The case was argued before Mr. Justice Mondelet in the Superior Court, on the demurrers and on the merits.

The Court gave judgment for the widow on the merits, and on the demurrers to the first and third pleas, and ordered a peremptory writ of mandamus to issue; but declared that it did not pay any regard either to the widow's special answer to the third plea or the special replication, which it seems to have considered as improperly pleaded.

There was an appeal to the Court of Revision, before three judges, who reversed the judgment of the Court below, quashed the writ originally issued, and dismissed the writ of mandamus with costs.

From this judgment the widow appealed to the Court of Queen's Bench, and presented petitions of recusation against four of the judges, which the judges refused to admit. It is unnecessary to enter upon this part of the case, as in the course of the argument their Lordships fully expressed their opinion that these petitions could not be sustained.

The Court of Queen's Bench affirmed the judgment of the Court of Revision; but the judges did not agree as to the grounds upon which their decision was founded. They discussed at some length the matters raised upon the third plea; but they decided

against the appellant upon the question as to the form of the writ and the regularity of the proceedings.

The questions of form, which are not unimportant, may be disposed of before the graver questions which arise out of the third plea are considered.

And first, is the mandamus bad upon the ground of uncertainty, or upon any other ground?

Their Lordships are of opinion that the writ was in proper form according to the Code of Procedure for Lower Canada; the procedure therein pointed out, though called a mandamus, was not a writ of mandamus in first instance, but, in effect, a summons to answer a petition praying for an order upon the defendants to do certain specified acts. The first thing to be done by the defendants was not, as in the case of a writ of mandamus in England, to make a return to the writ, but to appear to the summons, and plead to the petition. The sections of the Code of Procedure bearing upon this point are 1023, 1024 and 1025. Article 1023 evidently contemplates a writ of summons. It says the application is made by petition, supported by affidavits setting forth the facts of the case presented to the Court or a judge, who may thereupon order the writ of summons, for it goes on, "and such writ is served in the same manner as *any other writ of summons*." This is rendered more clear by Article 1024, which directs the subsequent proceedings to be had in accordance with the provisions of the first chapter of that section. That refers to Articles from 997 to 1002, both inclusive; which, in cases similar to our *quo warranto*, require an information to be presented to the Court or a judge, supported by affidavits, upon which the issue of a writ of summons may be ordered. The writ of summons commands appearance upon a day fixed, and is to be served in the manner pointed out. The defendants are to appear on the day fixed (Article 1011,) and to plead specially to the information (Article 1012). In the case of mandamus under the Code, therefore, the parties are not to make a return to the summons; the pleadings are to commence with a plea to the petition, and not a plea to the return to the writ. In our opinion, therefore, the objection to the writ, so far as it related to its being a mere writ of summons, and not a writ of mandamus, was untenable, and the practice of the Court in this respect, which has

always been adopted, is in compliance with the direction of the Code. The other technical objections to the writ have no substantial foundation. Three of the judges of the Court of Queen's Bench held that the writ was correct in point of form, although one of them, Mr. Justice Badgley, being of opinion that the writ asked for too much, held that a peremptory writ could not issue commanding the defendants to do the one thing only, viz., to bury, which, according to his views, they were legally bound to do. The procedure, therefore, requiring a petition and plea to the petition, it appears to follow that the applicant for the writ is not so strictly bound by the prayer of his petition as he is in this country to the command contained in the first writ of mandamus, and that the Court may mould the order for the peremptory writ in the same manner as the Court here may mould the rule for a mandamus. There being no rule which requires a peremptory writ of mandamus to be granted in the precise terms of the first writ, it seems to follow that the general rule applicable to pleadings either in equity or at common law, may be acted upon. According to them, a plaintiff may generally obtain a decree for less than that for which he asks, and for relief in a more distinct and specific form than that for which he has prayed, provided it is within the scope of the prayer.

In the present case the prayer of the petition was—that the defendants might be commanded to bury or cause to be buried the body of the deceased Joseph Guibord, in the Roman Catholic Cemetery, conformably to usage and to law. That was, doubtless, as pointed out by the Court of Review, extremely vague.

The objection to issuing a peremptory writ in that form was clearly stated by Mr. Justice Mackay (Record, pp. 270, 271).

"Under such vague conclusion," he observes, "the point really meant to be tried is hidden. That the defendants are bound to bury Guibord in the Roman Catholic Cemetery, according to the usages and the law, is indisputable, and is not disputed. Peremptory mandamus to do this would, nevertheless, leave things just as unsettled between plaintiff and defendants as they were the day before the plaintiff presented the requête."

But if the principle above laid down be acted upon, the Court may, in a peremptory writ, specify distinctly what they consider the defendants are bound to do according to usage and law, and

may peremptorily command the defendants to do it. If they consider that the defendants are bound to provide ecclesiastical burial with the rites and ceremonies of the Roman Catholic Church, they may say so. If they consider that the defendants are bound to bury the body in that part of the cemetery in which bodies of those interred with ecclesiastical burial are usually buried, the peremptory writ may be worded accordingly. If they think the defendants are bound to register the burial, the writ may go on to order such registration; or, if they think that the defendants are not bound to register the burial, they can order the burial alone.

The next point of form relates to the question who are the defendants to this writ. Are they the Curé and "Marguilliers" personally, or in their corporate capacity? The name used in the conveyance of the land for the cemetery, and that used in the plaint and writ of summons are identical. And their Lordships upon the whole are clearly of opinion that the writ was against "les Curé et Marguilliers," for the time being, in their corporate capacity as holders of the land and administrators of the cemetery; and that the Curé in his individual or spiritual capacity is not a party to this suit.

It now becomes necessary to determine the merits of the case, and the grave questions of public and constitutional law which are raised by the third plea, and the subsequent pleadings.

In order to do this, it is desirable to consider shortly the status of the Roman Catholic Church in Lower Canada, both before and after the cession of the Province of Quebec, in 1762.

It is certain that before the cession the Established Church of that Province, as in the Kingdom of France itself, was the Roman Catholic Church; its law, however, being modified by what were known as "les libertés de l'Eglise Gallicane." There seem also to have been regular Ecclesiastical Courts, and besides them there was vested in the Superior Council of Canada the jurisdiction recognized in French jurisprudence and enforced by the Parliaments of France as the "appellatio tanquam ab abusu," or the "appel comme d'abus."

In Dupin's "Manuel du Droit Public Ecclésiastique Français," ed. 1845, the celebrated work of Pithou is set forth, with notes of the learned editor, in the 79th Article. Pithou's treatise defines the "appel comme d'abus" as that—

"Appellation précise que nos pères ont dit estre quand il y a entreprise de juridiction ou attentat contre les saints décrets et canons receux en ce royaume, droits, franchises, libertez, et privilèges de l'Eglise Gallicane, concordats, édits, et ordonnances du Roy, arrests de son Parlement : bref, contre ce qui est non-seulement de droict commun, divin ou naturel, mais aussi des prérogatives de ce royaume et de l'Eglise d'iceluy."

The following are the public documents which show how the Roman Catholic Church in Lower Canada was dealt with on the conquest and cession of the province :—

The 27th Article of the Instrument of Cession is in these terms :

"Le libre exercice de la religion Catholique Apostolique et Romaine subsistera en son entier, encorte que tous les états et le peuple des villes et des campagnes, lieux et postes éloignés, pourront continuer de s'assembler dans les églises et de fréquenter les sacrements comme ci-devant, sans être inquiétés d'aucune manière, directement ou indirectement. Ces peuples seront obligés par le Gouvernement Anglais à payer sous le gouvernement de Sa Majesté Tres Chrétienne. Accordé pour le libre exercice de leur religion l'obligation de payer les dimes aux prêtres dépendra de la volonté du Roi."—(Page 15, "Actes Publics.")

Again, in the Treaty of 1763 it is said :—

"Sa Majesté Britannique consent d'accorder la liberté de la religion Catholique aux habitants du Canada, et leur permet de professer le culte de leur religion, autant que les lois de l'Angleterre le permettent."

And lastly, by an Act of Parliament passed in 1774 (14 Geo. III, c. 83), intituled, "An Act for making more Effectual Provision for the Government of Quebec, in North America," it was declared by section 5 that, for the more perfect security and ease of the minds of the inhabitants of the said province, His Majesty's subjects professing the religion of the Church of Rome of and in the said Province of Quebec might have, hold, and enjoy the free exercise of the religion of the Church of Rome, subject to the King's supremacy, declared and established by an Act made in the first year of the reign of Her Majesty, Queen Elizabeth, over all the dominions and countries which then did, or should thereafter belong to the Imperial Crown of this realm, and that the clergy of the said Church might hold, receive, and enjoy their accustomed dues and rights with respect to such persons only as should profess the said religion.

And by the 8th section it is enacted :

"That all His Majesty's Canadian subjects within the Province of Quebec,

the religious orders and communities only excepted, may also hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other their civil rights, in as large, ample, and beneficial manner as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments had not been made, and as may consist with their allegiance to His Majesty, and subjection to the Crown and Parliament of Great Britain; and that in all matters of controversy, relative to property and civil rights, resort shall be had to the laws of Canada as the rule for the decision of the same," &c.

From these documents it would follow that, although the Roman Catholic Church in Canada may on the conquest have ceased to be an Established Church in the full sense of the term, it, nevertheless, continued to be a Church recognized by the State; retaining its endowments, and continuing to have certain rights (*e. g.*, the perception of "dimes" from its members) enforceable at law.

It has been contended on behalf of the Appellants that the effect of the Act of Cession, the Treaty, and subsequent legislation, has been to leave the law of the Roman Catholic Church as it existed and was in force before the Cession, to secure to the Roman Catholic inhabitants of Lower Canada all the privileges which their fathers, as French subjects, then enjoyed under the head of the liberties of the Gallican Church; and further, that the Court of Queen's Bench, created in 1794, possessed, and that the existing Superior Court now possesses, as the Superior Council heretofore possessed, the power of enforcing these privileges by proceedings in the nature of "*appel comme d'abus*." Considering the altered circumstances of the Roman Catholic Church in Canada, the non-existence of any recognized ecclesiastical Courts in that Province, such as those in France which it was the office of an "*appel comme d'abus*" to control and keep within their jurisdiction; and the absence of any mention in the recent Code of Procedure for Lower Canada of such a proceeding, their Lordships would feel considerable difficulty in affirming the latter of the above propositions. Mr. Justice Mondelet, indeed, (Record 227-236) refers in his judgment to various cases of a mixed character in which the Civil Courts appear at first sight to have recently exercised a jurisdiction somewhat analogous to that exercised in the "*appel comme d'abus*." But on examination these cases prove to be suits of a different character, actions for damages against

spiritual persons for wrongs done by them in their spiritual capacities.

Their Lordships do not, however, think it necessary to express any opinion as to the competence of the Civil Courts to entertain a suit in the nature of the "*appel comme d'abus*," as they agree with Mr. Justice Mackay and other judges of the Court of Revision, that in such a suit the procedure must be different from the present, and that at least it would be necessary to bring the proper ecclesiastical authorities before the Court as defendants.

It is another and a different question, to be considered hereafter, whether the jurisprudence and precedents relating to the "*appel comme d'abus*" may not be considered by their Lordships as evidencing the law of the Church in Canada, by the maladministration of which the appellant complains that he has been wronged.

Nor do their Lordships think it is necessary to pronounce an opinion upon the difficult questions which were raised in the argument before them touching the precise *status*, at the present time, of the Roman Catholic Church in Canada. It has, on the one hand, undoubtedly, since the cession, wanted some of the characteristics of an Established Church; whilst, on the other hand, it differs materially in several important particulars from such voluntary religious societies as the Anglican Church in the Colonies, or the Roman Catholic Church in England. The payment of "dimes" to the clergy of the Roman Catholic Church by its lay members, and the rateability of the latter to the maintenance of parochial cemeteries, are secured by law and statutes. These rights of the Church must beget corresponding obligations, and it is obvious that this state of things may give rise to questions between the laity and clergy which can only be determined by the Municipal Courts. It seems, however, to their Lordships, to be unnecessary to pursue this question, because even if this Church were to be regarded merely as a private and voluntary religious society resting only upon a consensual basis, Courts of Justice are still bound, when due complaint is made that a member of the society has been injured as to his rights, in any matter of a mixed spiritual and temporal character, to enquire into the laws or rules of the tribunal or authority which has inflicted the alleged injury.

In the case of "Long *vs.* the Bishop of Cape-Town," their Lordships said :—

"The Church of England, in places where there is no Church established by law, is in the same situation with any other religious body—in no better, but in no worse position ; and the members of any other communion may adopt rules for enforcing discipline within their body which will be binding on those who, expressly or by implication, have assented to them. It may be further laid down that, where any religious or other lawful association has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequence of such violation ; the decision of such tribunal will be binding when it has acted within the scope of its authority, has observed such forms as the rules require, if any forms be prescribed, and, if not, has proceeded in a manner consonant with the principles of justice."—(1 Moore, N. S., 461).

Their Lordships will bear in mind these principles in the judgment which they are about to pronounce.

Now, what is the question to be here decided? It is the right of Guibord to interment in the ordinary way in the cemetery of his parish, a right enforceable by his representative. It may be observed that the Curé and Marguilliers are only proprietors of the parochial cemetery, in the sense in which a parson in England is the owner of the freehold of the churchyard, that is to say, subject to the right of the parishioner to be buried therein. The respondents do not contest that Guibord had that right, but say that they have refused nothing but ecclesiastical burial, for the refusal of which they are responsible only to the religious, and not to the civil authority. They admit, however, that the consequence of the refusal of ecclesiastical burial is that the remains of the deceased can be interred only in the smaller or reserved portion of the cemetery. It cannot be doubted on the evidence that this qualification of the general right of interment, this separation of the grave from the ordinary place of sepulture, implies degradation, not to say infamy.

That forfeiture of the right to ecclesiastical burial, involving these consequences, may be legally incurred, is not denied by the appellants. Their contention is, that it was not so incurred by Guibord ; that, according to the law of the religious community to which he belonged, he retained at the time of his death his right to be buried in the larger portion of the cemetery in the usual manner.

Their Lordships are disposed to concur, with one qualification, in the opinion expressed by Mr. Justice Berthelot as to the mixed character of these questions. He says :

"Le baptême, le mariage, et la sépulture sont de matière mixte, et les ecclésiastiques ne peuvent se refuser de les administrer à ceux de leurs paroissiens qui y ont droit, comme résidants dans l'enclave de sa paroisse, à moins cependant qu'il n'y ait des peines ecclésiastiques prononcées contre eux par l'évêque ou autre autorité ecclésiastique compétente."

If this passage is to be taken to imply that it is competent to the Bishop to deprive a Roman Catholic subject of his rights by pronouncing against him *ex mero motu* ecclesiastical penalties, their Lordships are of opinion that the proposition is too wide. They conceive that, if the act be questioned in a Court of Justice, that Court has a right to enquire, and is bound to enquire, whether that act was in accordance with the law and rules of discipline of the Roman Catholic Church which obtain in Lower Canada, and whether the sentence, if any, by which it is sought to be justified, was regularly pronounced by an authority competent to pronounce it.

It is worthy of observation, as bearing both upon the question of the *status* of the Roman Catholic Church in Lower Canada, and the manner of ascertaining the law by which it is governed, that in the Courts below, it was ruled, apparently at the instance of the respondents, that the law, including the ritual of the Church, could not be proved by witnesses, but that the Courts were bound to take judicial notice of its provisions.

The application of this ruling would be difficult, unless it be conceded that the ecclesiastical law which now governs Roman Catholics in Lower Canada is identical with that which governed the French province of Quebec. If modifications of that law have been introduced since the cession they have not been introduced by any legislative authority. They must have been the subject of something tantamount to a consensual contract binding the members of that religious community, and, as such, ought, if invoked in a Civil Court, to be regularly proven.

It seems, however, to be admitted on both sides that the law upon the point in dispute is to be found in the Quebec ritual, which was certainly accepted as law in Canada before the cession of the province, and does not differ in any material particular from the

Roman ritual also cited in the Court below. The Quebec ritual is as follows :—

“ On doit refuser la sépulture ecclésiastique,—1o, aux Juifs, aux infidèles, aux hérétiques, aux apostats, aux schismatiques, et enfin à tous ceux qui ne font pas profession de la religion Catholique. 2o. Aux enfants morts sans baptême. 3o. A ceux qui auraient été *nommément* excommuniés ou interdits, si ce n'est qu'avant de mourir ils aient donné des marques de douleur, auquel cas on pourra leur accorder la sépulture ecclésiastique, après que la censure aura été levée par nos ordres. 4o. A ceux qui se seraient tués par colère ou par désespoir, s'ils n'ont donné avant leur mort des marques de contrition ; il n'en est pas de même de ceux qui se seraient tués par frénésie ou accident, auxquels cas on la doit accorder. 5o. A ceux qui ont été tués en duel, quand même ils auraient donné des marques de repentir avant leur mort. 6o. A ceux qui, sans excuse légitime, n'auraient pas satisfait à leur devoir pascal, à moins qu'ils n'aient donné des marques de contrition. 7o. A ceux qui sont morts notoirement coupables de quelque péché mortel, comme si un fidèle avait refusé de se confesser, et de recevoir les autres sacrement avant que de mourir, s'il était mort sans vouloir pardonner à ses ennemis, s'il avait été assez impie pour blasphémer sciemment et volontairement sans avoir donné aucun signe de pénitence. Il ne faudrait pas user de la même rigueur envers celui qui aurait blasphémé par folie ou par la violence du mal, car en ce cas les blasphèmes ne seraient pas volontaires, ni par conséquent des pechés. 8o. Aux pécheurs publics qui seraient morts dans l'impénitence ; tels sont les concubinaires, les filles ou femmes prostituées, les sorciers et les farceurs, usuriers, etc. A l'égard de ceux dont les crimes seraient secrets, comme on ne leur refuse pas les sacrements, on ne doit pas aussi leur refuser la sépulture ecclésiastique. Pour ce qui est des criminels qui auront été condamnés à mort et exécutés par ordre de la justice, s'ils sont morts pénitents, on peut leur accorder la sépulture ecclésiastique, mais sans cérémonie. Le curé ou vicaire y assiste sans surplis, et disent les prières à voix basse. Quand il y aura quelque doute sur ces sortes de choses, les cures nous consulteront ou nos grands vicaires.”

The refusal of ecclesiastical burial to Guibord is not justified, and could not have been justified by either the 1st, 2nd, 4th, 5th, or 7th of the above rules.

To bring him within the 3rd rule it would be necessary to show that he was excommunicated by name. That such a sentence of excommunication might be passed against a Roman Catholic in Canada and that it might be the duty of the Civil Courts to respect and give effect to it, their Lordships do not deny. It is no doubt true, as has already been observed, that there are now in Canada no regular ecclesiastical Courts, such as existed and were recognized by the State when the province formed part of the dominions of France. must, however, be remembered that a Bishop is always a *iudex ordinarius*, according to the

canon law, may hold a Court and deliver judgment if he has not appointed an official to act for him. And it must further be remembered that, unless such sentences were recognized, there would exist no means of determining amongst the Roman Catholics of Canada the many questions touching faith and discipline which, upon the admitted canons of their Church, may arise amongst them. There is, however, no proof that any sentence of excommunication was ever passed against Guibord *nominatim* by the Bishop or any other ecclesiastical authority. Indeed, it was admitted at the Bar that there was none; their Lordships are therefore relieved from the necessity of considering how far such a sentence, if passed, might have been examinable by the Temporal Court, when a question touching its legal effect and validity was brought before that Court.

It should be borne in mind that an issue was distinctly raised by the pleadings upon the fact of such a sentence; and the necessity of such a sentence to justify the refusal seems to be, to some extent, admitted by the allegation in the defendant's pleading that *le décret*, as it is there called, of the Administrator-General, was *un décret nominal*.

In the course of the argument it was suggested, rather than argued, that the refusal of ecclesiastical burial in Guibord's case might be brought within the 6th of the above rules, and justified on the ground that, without legitimate reason, he had failed to communicate at Easter. But upon this their Lordships have to observe that this failure was not the ground on which ecclesiastical burial was denied to him; and that, so far from wilfully abstaining from receiving the sacraments of the Church, those sacraments were refused to him when he desired to receive them, simply because he continued to be a member of the Institute.

The cause of refusal finally insisted upon was that Guibord was "un pécheur public" within the meaning of the 8th rule.

This defence was set up for the first time in the replication.

The Administrator-General's evidence on the point should be noticed:—

Question.—Pour quelle raison feu Joseph Guibord, comme membre de l'Institut Canadien, ne pouvait-il pas être admis aux sacrements de l'Eglise?

Réponse.—Parce que, comme tel, il est considéré comme pecheur public. On entend par pecheur public celui qui, pour une raison connue publiquement, ne peut participer aux sacrements de l'Eglise. M. Joseph Guibord, en appartenant à



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l'Institut Canadien, appartenait à un Institut qui se trouvait, comme il se trouve encore, sous les censures de l'Eglise par la raison qu'il possède une bibliothèque contenant des livres défendus par l'Eglise sous peine d'excommunication, *late sententia* encourue *ipso facto*, et réservée au Pape, par le fait de la possession des dits livres. Cette espèce d'excommunication s'encourt par le fait même, dès que l'on connaît la loi de l'Eglise qui en défend la lecture et la retenue, dès que cela parvient à la connaissance de ceux qui les possèdent. Cette excommunication a atteint M. Guibord par le fait même qu'il était membre de l'Institut. Lorsqu'on est sous l'effet de la dite excommunication, quoique l'on puisse continuer à être membre de l'Eglise Catholique, et que, de fait, l'on continue à en être membre, l'on est privé de la participation aux sacrements, ce qui entraîne la privation de la sépulture ecclésiastique. Voilà pourquoi cette espèce de sépulture a été refusée à M. Guibord."

The evidence continues—

"*Question.*—Le dit feu Joseph Guibord, comme membre de l'Institut Canadien, était-il sous l'effet de l'excommunication, en vertu de quelque règle générale de l'Eglise seulement, ou en conséquence de quelque décret particulier ?

"*Réponse.*—Il y était d'abord en vertu de la loi générale de l'Eglise, et en vertu de l'application qu'en a faite l'Evêque de Montréal par son mandement."

The evidence further continues—

"*Question.*—A quel mandement faites-vous allusion ?

"*Réponse.*—C'est à celui produit en cette cause comme l'Exhibit B. de la Demanderesse.

"*Question.*—Est-il déclaré quelque part dans aucun mandement ou lettre pastorale émanant de l'Evêque de Montréal que le fait d'appartenir à l'Institut Canadien entraîne l'excommunication ; et si vous répondez affirmativement, veuillez indiquer les termes qui décrètent telle chose.

"*Réponse.*—Ceci est déclaré dans l'annonce de Monseigneur de Montréal, que, en ma qualité d'administrateur, j'ai fait publier le quatorze Août mil huit cent soixante-et-neuf, laquelle annonce est produite comme pièce D. de la Demanderesse. Voici dans quels termes ceci est déclaré. "Ainsi, nos très chers frères, deux choses sont ici spécialement et strictement défendues, savoir : 1, de faire partie de l'Institut Canadien tant qu'il enseignera des doctrines pernicieuses ; et 2, de publier, retenir, garder, lire l'*Annuaire* du dit Institut pour 1868. Ces deux commandements de l'Eglise sont en matière grave, il y a par conséquent un grand péché à les violer sciemment. En conséquence celui qui persiste à vouloir rester dans le dit Institut, ou à lire ou seulement garder le sus-dit *Annuaire*, sans y être autorisé par l'Eglise, se prive lui-même des sacrements, même à l'article de la mort, parceque, pour être digne d'en approcher, il faut détester le péché, qui donne la mort à l'âme, et être disposé à ne plus le commettre."

"*Question.*—Etre privé des sacrements et être excommunié, est-ce la même chose ?

"*Réponse.*—Dans le cas présent, c'est la même chose.

"*Question*.—L'excommunication, peut-elle être prononcée sans qu'il soit même fait usage du mot ?

"*Réponse*.—Je ne suis pas prêt à répondre à cette question."—(Record, 146. 7).

It is impossible wholly to avoid a suspicion that it had originally been intended to rely on an *ipso facto* excommunication, and that this subsequent defence of "pécheur public" was resorted to when it became manifest that a sentence of excommunication was necessary, and that none had been pronounced.

What is this category of "pécheur public" to include? Is the category capable of indefinite extension by means of the use of an *et cætera* in the Quebec Ritual, or if the force of an *et cætera* is to be allowed to bring a man within the category of persons liable to what in ecclesiastical law is a criminal penalty, must it not be confined to offences *ejusdem generis* as those specified? Guibord's case did not come within any of the enumerated classes.

Some argument was raised as to the effect of the words, "quand il y aura quelque doute sur ces sortes de chose, les Curés nous consulteront ou notre grand Vicaire;" but their Lordships are of opinion that these words can at most imply a duty on the part of the Curé to consult the Ordinary as to the application of the law in doubtful cases, not a power on the part of the Ordinary to enlarge the law in giving those directions, or to create a new category of offenders.

To allow a discretionary addition to, or an enlargement of, the categories specified in the Ritual, would be fraught with the most startling consequences. For instance, the *et cætera* might be, according to the supposed exigency of the particular case, expanded so as to include within its bann any person being in habits of intimacy or conversing with a member of a literary society containing a prohibited book; any person visiting a friend who possessed such a book; any person sending his son to a school in the library of which there was such a book; going to a shop where such books were sold; and many other instances might be added. Moreover, the Index, which already forbids Grotius, Pascal, Pothier, Thuanus, and Sismondi, might be made to include all the writings of jurists and all legal reports of judgments supposed to be hostile to the Church of Rome; and the

Roman Catholic lawyer might find it difficult to pursue the studies of his profession.

Their Lordships are satisfied that such a discretionary enlargement of the categories in the Ritual would not have been deemed to be within the authority by the law of the Gallican Church as it existed in Canada before the cession; and, in their opinion, it is not established that there has been such an alteration in the *status* or law of that Church founded on the consent of its members, as would warrant such an interpretation of the Ritual, and that the true and just conclusion of law on this point is, that the fact of being a member of this Institute does not bring a man within the category of a public sinner to whom Christian burial can be legally refused.

It would further appear that, according to the ecclesiastical law of France, a personal sentence was in most cases required in order to constitute a man a public sinner.

Jean de Pontas (Article 2, des Cas de Conscience, vo. Sépulture, A. D. 1715, Record 245) says:—

“Un homme en France n'est point censé pécheur public, et ne peut être traité comme tel, à moins qu'il n'y ait une sentence déclaratoire rendue par le jugement ecclésiastique contre le coupable.

“A propos d'un concubinaire public, pendant près de dix ans, mort endurci dans le crime, sans avoir voulu se confesser, Pontas décide que ‘le curé doit enterrer cet homme en observant toutes les formalités pratiquées par l'Eglise, sans pouvoir ni s'absenter, ni feindre de refuser la sépulture ecclésiastique, sous prétexte d'intimider les autres pécheurs semblables, ni enfin ordonner à un autre prêtre de l'enterrer sans observer les cérémonies ordinaires.’”

Durant de Maillane (Droit Canonique, t. 5, p. 442.) says:—

“On ne reconnaît pour véritables excommuniés à fuir, que les Palens et les Juifs, ou les hérétiques condamnés et séparés ainsi totalement du corps des fidèles. Les autres coupables de différents crimes qu'ils n'expient point avant leur mort ne sont privés de la sépulture que lorsqu'ils sont dénoncés excommuniés, ou que leur impénitence finale est tellement notoire qu'on ne peut absolument s'en déguiser la connaissance. Le moindre doute tire le défunt hors du cas de privation, parce que chacun est présumé penser à son salut.

“Suivant les maximes du royaume, on ne prive de la sépulture ecclésiastique que les hérétiques séparés de la communion de l'Eglise, et les excommuniés dénoncés. La notoriété sur cette matière n'est pas absolument requise, parce qu'il y a des cas où il est très nécessaire de faire respecter à cet égard les saintes lois de l'Eglise; mais elle n'est pas aisément reçue, à cause des inconvénients qui pourraient en résulter; car le refus de la sépulture est regardé parmi nous comme une telle injure, ou même comme un tel crime, que chaque fidèle, pour l'honneur de

la religion, et la mémoire ou même le bien de son frère en Jésus-Christ, est recevable à s'en plaindre. Cette plainte se porte devant des juges séculiers, parce qu'elle intéresse en quelque sorte le bon ordre dans la société, et l'honneur même de ses membres."

Héricourt (Lois Ecclésiastiques, p. 174) :—

"Avant de dénoncer excommunié celui qui a encouru une excommunication *lata sententia*, il faut le citer devant le juge ecclésiastique, afin de justifier le crime qui a donné lieu à la censure et d'examiner s'il n'y aurait pas quelque moyen de défense légitime à proposer."

No personal sentence, such as is contemplated by these authorities, was, as already pointed out, ever passed against Guibord.

It is also to be borne in mind that no sentence, whatever might have been its value, was passed even after Guibord's death. There is, indeed, a letter called a *décret* of the Administrator-General to the Curé, which, after referring to a letter of the Bishop, written before Guibord's death, refuses ecclesiastical sepulture to him as a member of the Institute. The representatives of Guibord were neither summoned nor heard. This so-called *décret* had none of the essential elements of a judicial sentence.

It remains for their Lordships to consider what in the substantive law upon which the respondents rely in support of their contention that Guibord is to be considered a public sinner within the terms of the Quebec ritual.

They appear to place their principal reliance on Rule X of the Council of Trent :—

"Omnibus fidelibus præcipitur ne quis audeat contra h. rum regularum præscriptum, aut hujus Indicis prohibitionem libros aliquos legere aut habere.

"Quod si quis libros hereticorum vel cujus vis auctoris scripta ob heresim vel ob falsi dogmatis suspicionem damnata, atque prohibita legerit vel habuerit, statim in excommunicationis sententiam incurrat."

Various observations arise on this citation, which seem to deprive it of all authority in the present case.

In the first place it is a matter almost of common knowledge, certainly of historical and legal fact, that the decrees of this Council, both those that relate to discipline and to faith, were never admitted in France to have effect *proprio vigore*, though a great portion of them has been incorporated into French Ordonnances.

In the second place, France has never acknowledged nor received, but has expressly repudiated, the decrees of the Congregation of the Index.

Gibert, in his *Institutes*, says that the *ipso facto* excommunication inflicted by the Council of Trent as the punishment of reading or possessing prohibited books would have no effect in France *dans le fort extérieur*. *Dupin*, a jurist already mentioned, denies the authority in France of the decrees of the Congregation. He says:—

“En effet, en consultant les précédents, on trouve un célèbre arrêt du Parlement de Paris qui l’a jugé ainsi 1647, après un éloquent plaidoyer de l’Avocat-Général Omer Talon :

“ ‘*Nous ne reconnoissons point en France,*’ dit ce Magistrat, ‘l’autorité, la puissance, ni la juridiction des congrégations qui se tiennent à Rome ; le Pape peut les établir comme bon lui semble dans ses Etats ; mais les décrets de ces congrégations n’ont point d’autorité ni d’exécution dans le royaume. . . . Il est vrai que dans ces congrégations se censurent les livres défendus, et dans icelles se fait l’*index expurgatorius*, lequel s’augmente tous les ans ; et c’est là où autrefois ont été censurés les arrêts de cette cour rendus contre Chastel, les œuvres de M. le Président de Thou, les libertés de l’Eglise Gallicane, et les autres livres qui concernent la conservation de la personne de nos rois et l’exercice de la justice royale.’ ” &c.—(Dupin, Droit Public Ecclésiastique, avertissement sur la 4^{ème} édition).

No evidence has been produced before their Lordships to establish the very grave proposition that Her Majesty’s Roman Catholic subjects in Lower Canada have consented, since the cession, to be bound by such a rule as it is now sought to enforce, which, in truth, involves the recognition of the authority of the Inquisition, an authority never admitted but always repudiated by the old law of France. It is not, therefore, necessary to enquire whether since the passing of the 13 Geo. III, c. 83, which incorporates (s. 5) the 1st of Elizabeth, already mentioned, the Roman Catholic subjects of the Queen could not legally consent to be bound by such a rule.

The conclusion, therefore, to which their Lordships have come upon this difficult and important case is that Respondents have failed to show that Guibord was, at the time of his death, under any such valid ecclesiastical sentence or censure as would, according to the Quebec ritual, or any law binding upon Roman Catholics in Canada, justify the denial of ecclesiastical sepulture to his remains.

It is, however, suggested that the denial took place, in fact, by the order of the Bishop or his Vicar-General; that the Respondents are bound to obey the orders of their ecclesiastical superior; and, therefore, that no mandamus ought to issue against them. Their Lordships cannot accede to this argument. They apprehend that it is a general rule of law in almost every system of jurisprudence that an inferior officer can justify his act or omission by the order of his superior only when that order has been regularly issued by competent authority.

The argument would, in fact, amount to this: that even if it were clearly established that Guibord was not disentitled by the law of the Roman Catholic Church to ecclesiastical burial, nevertheless the mere order of the Bishop would be sufficient to justify the Curé and "Marguilliers" in refusing to bury him in that part of the parochial cemetery in which he ought, on this hypothesis, to be interred; or, in other words, the Bishop, by his own absolute power in any individual case, might dispense with the application of the general ecclesiastical law, and prohibit upon any grounds, revealed or not revealed, satisfactory to himself, the ecclesiastical burial of any parishioner. There is no evidence before their Lordships that the Roman Catholics of Lower Canada have consented to be placed in such a condition.

Their Lordships do not think it necessary to consider whether, if the parties and circumstances of the suit had been different, they would or would not have had power to order the interment of Guibord to be accompanied by the usual religious rites, because the widow finally forewent this demand, and Counsel at their Lordship's bar have not asked for it, and also because the Curé is not before them in his individual capacity; but they will humbly advise Her Majesty that the Decrees of the Court of Queen's Bench and of the Court of Review be reversed. That the original Decree of the Superior Court be varied, and that, instead of the order made by that Court, it should be ordered that a peremptory writ of mandamus be issued, directed to "Les Curé et de l'Œuvre et Fabrique de Notre-Dame de Montréal," commanding them, upon application being made to them by or on behalf of Institut Canadien, and upon tender or payment to them of the usual and accustomed fees, to prepare, or permit to be prepared, a grave in that part of the cemetery in which the remains of

Roman Catholics, who receive ecclesiastical burial, are usually interred, for the burial of the remains of the said Joseph Guibord; and that, upon such remains being brought to the said cemetery for that purpose at a reasonable and proper time, they do bury the said remains in the said part of the said cemetery, or permit them to be buried there. And that the Defendants do pay the Canadian Institute all the costs of the widow in all the lower Courts, and of this Appeal, except such costs as were occasioned by the plea of *recusatio judicis*, which should be borne by the Appellants.

Their Lordships cannot conclude their Judgment without expressing their regret that any conflict should have arisen between the ecclesiastical members of the Roman Catholic Church in Montreal, and the lay members belonging to the Canadian Institute.

It has been their Lordships' duty to determine the questions submitted to them in accordance with what has appeared to them to be the law of the Roman Catholic Church in Lower Canada.

If, as was suggested, difficulties should arise by reason of an interment without religious ceremonies in the part of the ground to which the mandamus applies, it will be in the power of the ecclesiastical authorities to obviate them by permitting the performance of such ceremonies as are sufficient for that purpose, and their Lordships hope that the question of burial, with such ceremonies, will be reconsidered by them, and further litigation avoided.

VIII.

DECREE OF THE PRIVY COUNCIL.

On the 12th of August, 1875, Mr Joseph Doutre, Q.C., received from London the official Decree of the Privy Council, commanding the ecclesiastical authorities to bury the remains of Joseph Guibord in the manner therein set forth. The Decree was accompanied by the following letter:—

(Copy).

Council Office, Whitehall,
23rd July, 1875.

Dame Henriette Brown,

vs.

Les Curé &c., de Montreal from Canada.

Gentlemen,

I have the honor to transmit to you the Order of Her Majesty in Council approving the Report of the Judicial Committee of the Privy Council on the above appeal.

• This printed document, with the seal of the Privy Council, and the signature of the Clerk of the Council, is the original Order of Her Majesty, which must be filed in the Court from which the appeal is brought in order to give effect to the judgment.

Other printed copies of this order, not so authenticated, may be obtained at the Privy Council office by the parties upon payment of five shillings for each copy.

I am, gentlemen,

Your obedient servant,

(Signed) H. REEVE,

Rg. P. L.

Messrs. Few & Co.

(L.S.)

At the Court at Windsor Castle,

The 28th day of November, 1874.

PRESENT.

The Queen's Most Excellent Majesty.

LORD PRESIDENT.

EARL OF DERBY.

MR. SECRETARY CROSS.

“**W**HEREAS, there was this day read at the Board a Report from the Judicial Committee of the Privy Council, dated the 21st of November, instant, in the words following, viz :—

“**YOUR MAJESTY** having been pleased by your General Order in Council of the 3rd November, 1871, to refer unto this Committee the matter of a humble appeal between Dame Henriette Brown, appellant, and the Curate and Churchwardens of the Parish of Montreal, respondents, and likewise, a humble petition of Dame Henriette Brown, of Montreal, in the Province of Quebec, Canada, setting forth that the appellant's late husband, Joseph Guibord, died on the 18th day of November, 1869, and burial in the Roman Catholic cemetery, at Montreal, having been refused to his remains, the appellant applied by petition to the Superior Court of the Province of Quebec, Canada, for a writ of mandamus, commanding the Curate and Churchwardens of the Parish of Montreal, on payment by the appellant of the usual fees, to inter or cause to be interred within eight days from the judgment to be rendered, in the Roman Catholic Cemetery of Cotes des Neiges, under their control and administration, the body of the said Joseph Guibord, according to custom and law, and, further, to insert in the civil registers kept by them, the certificate of the said interment of the said Joseph Guibord; that a writ was accordingly issued by order of a judge of the said court, commanding the said Curate and Churchwardens of the said Parish of Montreal, to perform the said acts and duties, or to show cause to the contrary, which writ, together with the appellant's aforesaid petition, was duly served upon the said Curate and Churchwardens of the said Parish of Montreal; that the said Curate and Churchwardens duly appeared and pleaded, and issue having being joined and evidence taken, the whole case was heard upon the merits, and on the 2nd day of May, in the year of Our Lord 1870, the Superior Court gave judgment in favor of the appellant, and ordered a peremptory writ of mandamus to issue, commanding the said Curate and Churchwardens to perform the said acts and duties hereinbefore set forth; that the said Curate and Churchwardens inscribed the case for review, and on the 10th day of September, in the year of Our Lord 1870, the Court gave judgment reversing the said judgment of the 2nd of May in the year of Our Lord 1870, and quashing the said writ of mandamus; that the appellant duly appealed from the said judgment to the Court of Queen's Bench for Canada, Province of Quebec; that on the 2nd day of December

in the year of Our Lord 1870, the appellant presented petitions of recusation against four of the judges of the said Court of Queen's Bench ; that on the 9th day of December, in the year of Our Lord 1870, the said Court of Queen's Bench gave judgment declaring the said petitions inadmissible ; that the four judges against whom the said petitions of recusation were presented took part in this judgment ; that the said Court of Queen's Bench proceeded to hear the case on the merits, and on the 7th day of September, in the year of Our Lord 1871, gave judgment dismissing the appeal with costs ; that the four judges against whom the petitions in recusation were presented took part in the said judgment ; that the appellant feeling herself aggrieved by the said judgment of the Court of Revision of the 10th day of September in the year of Our Lord 1870, and the said judgments of the Court of Queen's Bench of the 9th day of December in the year of Our Lord 1870, and the 7th day of September in the year of Our Lord 1871, applied to the said Court of Queen's Bench for leave to appeal to Your Majesty in Council, and the said Court of Queen's Bench granted such leave upon the usual terms, which have since been duly complied with, and humbly praying that Your Majesty in Council will be pleased to take her said appeal into consideration, and that the said judgment of the Court of Revision of the 10th day of September in the year of Our Lord 1870, and the said judgments of the Court of Queen's Bench of the 9th day of December in the year of Our Lord 1870, and the 7th day of September in the year of Our Lord 1871, may be reversed, set aside, altered or varied, or other relief in the premises.

" AND YOUR MAJESTY having likewise been pleased by your General Order in Council of the 27th November, 1872, to refer unto this Committee a humble petition of the Institut Canadien, setting forth that the petitioners are a body corporate, incorporated by a Canadian statute, 16 Vict., c. 261 ; that on the 24th November, 1864, Dame Henriette Brown, the late appellant, now deceased, applied by petition to the Superior Court of the Province of Quebec, Canada, for a writ of mandamus, commanding the Curate and Churchwardens of the Parish of Montreal, on payment by the said Dame Henriette Brown of the usual fees, to inter or cause to be interred within eight days from the judgment to be rendered, in the Roman Catholic Cemetery of Cote des Neiges, under their control and administration, the body of Joseph Guibord, according to custom and law, and further, to insert in the civil registers kept by them the certificate of the said interment of the said Joseph Guibord ; that a writ was accordingly issued by order of a judge of the said Court, commanding the said Curate and Churchwardens of the said Parish of Montreal to perform the said acts and duties, or to show cause to the contrary, which writ, together with the petition of the said Dame Henriette Brown, was duly served upon the said Curate and Churchwardens of the said Parish of Montreal ; that the said Curate and Churchwardens duly appeared and pleaded, and issue having been joined and evidence taken, the whole case was heard on the merits, and on the 2nd day of May, in the year of Our Lord 1870, the Superior Court gave judgment in favor of the said Dame Henriette Brown, and ordered a peremptory writ of mandamus to issue, commanding the said Curate and Churchwardens to perform the said acts and duties hereinbefore set forth : that the said Curate and Churchwardens inscribed the case for review, and on the

10th day of September in the year of our Lord 1870, the Court gave judgment reversing the said judgment of the 2nd day of May in the year of our Lord 1870, and quashing the said writ of mandamus ; that Dame Henriette Brown duly appealed from the said judgment to the Court of Queen's Bench for Canada, Province of Quebec ; that on the 2nd day of December, in the year of our Lord 1870, Dame Henriette Brown presented petitions of recusation against four of the judges of the said Court of Queen's Bench ; that on the 9th day of December in the year of Our Lord 1870, the said Court of Queen's Bench gave judgment declaring the said petitions inadmissible ; that the four judges against whom the said petitions of recusation were presented took part in this judgment ; that the said Court of Queen's Bench proceeded to hear the case on the merits, and on the 7th day of September, in the year of our Lord 1871, gave judgment dismissing the appeal with costs ; that the four judges against whom the petitions in recusation had been presented took part in the said judgment ; that the said Dame Henriette Brown obtained leave to appeal to Your Majesty in Council, and on the 12th June, 1872, a petition of appeal by the said Dame Henriette Brown against the said judgments of 10th September, 1870, 9th December, 1870, and 7th September, 1871, was duly filed, which appeal is now pending before this Committee ; that the said Dame Henriette Brown died, and was buried on the 2nd April, 1873 ; that the said Dame Henriette Brown, by her will dated 22nd October, 1870, gave and bequeathed to the petitioners all her goods, movable and immovable, rights, claims and actions, without any exceptions ; that at a meeting of the Board of Directors of the Institut Canadien, held the 2nd April, 1873, it was resolved to accept the said legacy, and to continue the said appeal hereinbefore mentioned ; that on the 15th of April, 1873, probate of the said will, with benefit of inventory, was granted to the petitioners by Mr. Justice Mackay, one of the judges of the said Superior Court for the Province of Quebec, Canada ; that by the Code of Procedure for the Province of Quebec, Canada, it is proved by sections 436 and 437, that in case of the death of the party to a suit, his attorney shall give notice thereof to the opposite party, and that the suit shall be suspended until its continuance by those interested, and by section 438 that a suit may be continued by the heirs or representatives of the deceased party, and humbly praying that Your Majesty in Council will grant leave to the petitioners to continue the said appeal ; and, the Lords of this Committee, having taken the said humble petition into consideration, and humbly reported to Your Majesty on the 20th May, 1873, as their opinion, that the said Institut Canadien ought to be allowed to continue the said appeal without prejudice to any question which may be raised before their Lordships, on the hearing of this appeal, as to the competency of the Institut Canadien, as universal legatee of the late appellant, Dame Henriette Brown, to continue the appeal, and that on these terms the said appeal ought to be revived accordingly, and to stand in the same plight and condition as it was in at the time of the death of the said late appellant ; and Your Majesty having been pleased, by and with the advice of Your Privy Council, to order by Your Majesty's Order in Council of the 26th June, 1873, that the said Institut Canadien be allowed to continue the said appeal without prejudice to any question which may be raised, on the hearing thereof, as to the competency of the Institut Canadien, as universal legatee of the late appellant Dame Henriette Brown, to continue the

appeal, and that on these terms the appeal be, and the same thereby revived accordingly, and should stand in the same plight and condition as it was in at the time of the death of the said late appellant. The Lords of the Committee, in obedience to Your Majesty's said General Order of reference, have taken the said humble petition and appeal into consideration, and having heard counsel on behalf of the Institut Canadien, and also on behalf of the said Curé and Marguilliers of the Parish of Montreal, in Canada, their Lordships do this day agree humbly to report to Your Majesty, as their opinion, that the decree or judgment of the Court of Queen's Bench for the Province of Quebec, of the 7th September, 1871, and the Decree of the Superior Court in Review of the 16th September, 1870, ought to be reversed ; and that the original Decree of the Superior Court of the 2nd May, 1870, ought to be varied, and that, instead of the said last mentioned decree, it should be ordered that a peremptory writ of mandamus be issued, directed to ' Les Curé et Marguilliers de L'Œuvre et Fabrique de Notre Dame de Montreal,' commanding them upon the application being made to them by or on behalf of the Institut Canadien, and upon tender or payment to them of the usual and accustomed fees, to prepare, or permit to be prepared, a grave in that part of the cemetery in which the remains of Roman Catholics who receive ecclesiastical burial are usually interred, for the burial of the remains of the said Joseph Guibord ; and that upon such remains being brought to the said cemetery for that purpose, at a reasonable and proper time, they do bury the said remains in the said part of the said cemetery, or permit them to be buried there ; and that the respondents do pay to the Canadian Institute all costs of the widow in all the lower courts, except such costs as were occasioned by the plea of *recusatio judicis*, which should be borne by the present appellants.

"And in case Your Majesty should be pleased to approve of this Report, and to order as is herein recommended, then their Lordships do direct that there be paid by the respondents to the present appellants, the sum of one thousand and seventy-nine pounds eighteen shillings and four pence, sterling, for the costs of this appeal."

Her Majesty having taken the said report into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof and to order, as it is hereby ordered, that the said decree of the Court of Queen's Bench for the Province of Quebec, of the 7th September, 1871, and the decree of the Superior Court in Review of the 10th September, 1870, be, and the same are hereby, reversed with costs ; and Her Majesty is further pleased to order that the original order of the said Superior Court of the 2nd May, 1870, be varied, and that, instead of the said order, it should be ordered that a peremptory writ of mandamus be issued, directed to " Le Curé et Marguilliers de L'Œuvre et Fabrique de Notre Dame de Montreal," commanding them, upon application being made to them by or on behalf of the Institut

Canadien, and upon tender or payment to them of the usual and accustomed fees, to prepare, or permit to be prepared, a grave in that part of the cemetery in which the remains of Roman Catholics who receive ecclesiastical burial are usually interred, for the burial of the remains of the said Joseph Guibord, and that upon such remains being brought to the said cemetery for that purpose, at a reasonable and proper time, they do bury the said remains in the said part of the said cemetery; or permit them to be buried there; and it is further ordered that the defendants do pay to the Canadian Institute all the costs of the widow in all the lower courts, except such costs as were occasioned by the plea of *recusatio judicis*, which should be borne by the appellants; and likewise the sum of one thousand and seventy-nine pounds eighteen shillings and four pence sterling, for the cost of this appeal. Whereof the Governor-General, Lieutenant-Governor, or Commander-in-Chief of the Dominion of Canada, for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed), E. HARRISON.

VIII.

THE ATTEMPTED BURIAL ON 2ND SEPT.

Thursday, the second day of September, was fixed by the officers of the Institute for the burial of Guibord, Mr. Doutre having carefully taken all the necessary preliminary measures as required by law

DIGGING THE GRAVE.

In the morning, Mr. A. Boisseau, Superintendent of l'Institut Canadien, accompanied by a fellow-member, and armed with a receipt signed by A. Choquet, officer of the Fabrique, and dated 16th May, 1873, conveying to the Guibord estate the lot 873 in section N of the cemetery of Notre Dame des Neiges, proceeded to the Catholic cemetery to oversee the digging of the grave.

The lot is seven feet long by four feet wide at one end and seven at the other. The body of Guibord's wife occupied one side of the lot, but the width at the narrower end being insufficient to allow the two coffins to lie side by side, it was decided to superpose the coffin of Guibord over that of his wife. There was not the least sign of any suspicious parties about, and only here and there two or three small groups of individuals engaged in burying their own friends. A Catholic Irishman, a laboring man, came along, and after exchanging a few friendly words with the workmen and the gentlemen present, went off again on his business. A gentleman and lady, apparently Americans, drove up and enquired if that was where Guibord was to be buried. Upon being told that it was, they alighted and inspected the place with much interest, and then drove away. During the progress of the work two or three other laboring men employed in the cemetery came up, one by one, and, after a little friendly conversation, departed. Mr. Boisseau, finding that everything was

progressing satisfactorily, left the ground at half-past ten o'clock.

When the grave was dug, it was only a little over three feet from the surface of the ground to the lid of the coffin of Madame Guibord. A plain black cross stood at head, on which was her name and the date of her death.

AT THE PROTESTANT CEMETERY.

At two o'clock some two or three hundred persons had assembled in the Protestant Cemetery to witness the procession. Mr. Doutre presented a written order for the delivery of the body, to the trustees of the Mount Royal Cemetery, Messrs. M. H. Gault, Wm. Turner, Andrew Robertson and George Macrae. Among those present were a number of the members of l'Institut Canadien and old friends of Guibord. The only relative of Guibord present was Mrs. Rose, his wife's sister. At ten minutes past two o'clock, Mr. Spriggings, the guardian of the cemetery, opened the door of the vault, and the coffin was lifted by three laboring men, carried out and deposited upon a trestle. Mr. Doutre then uncovered his head, so did also the other gentlemen standing about, and asked Mr. Spriggings: "Is this the same coffin that was brought here on the 20th of November, 1869?" Mr. Spriggings answered, "It is the same." The coffin was then placed upon the hearse, which was supplied by Mr. Richard Seale, St. Antoine street, and was driven by his son. The hearse was surmounted by a cross, and the British flag was thrown over the coffin. The procession, comprising a dozen carriages, then formed and left the cemetery at 2.25. The procession went round the mountain at a smart trot and reached the gates of the Catholic Cemetery at about 3 p.m.

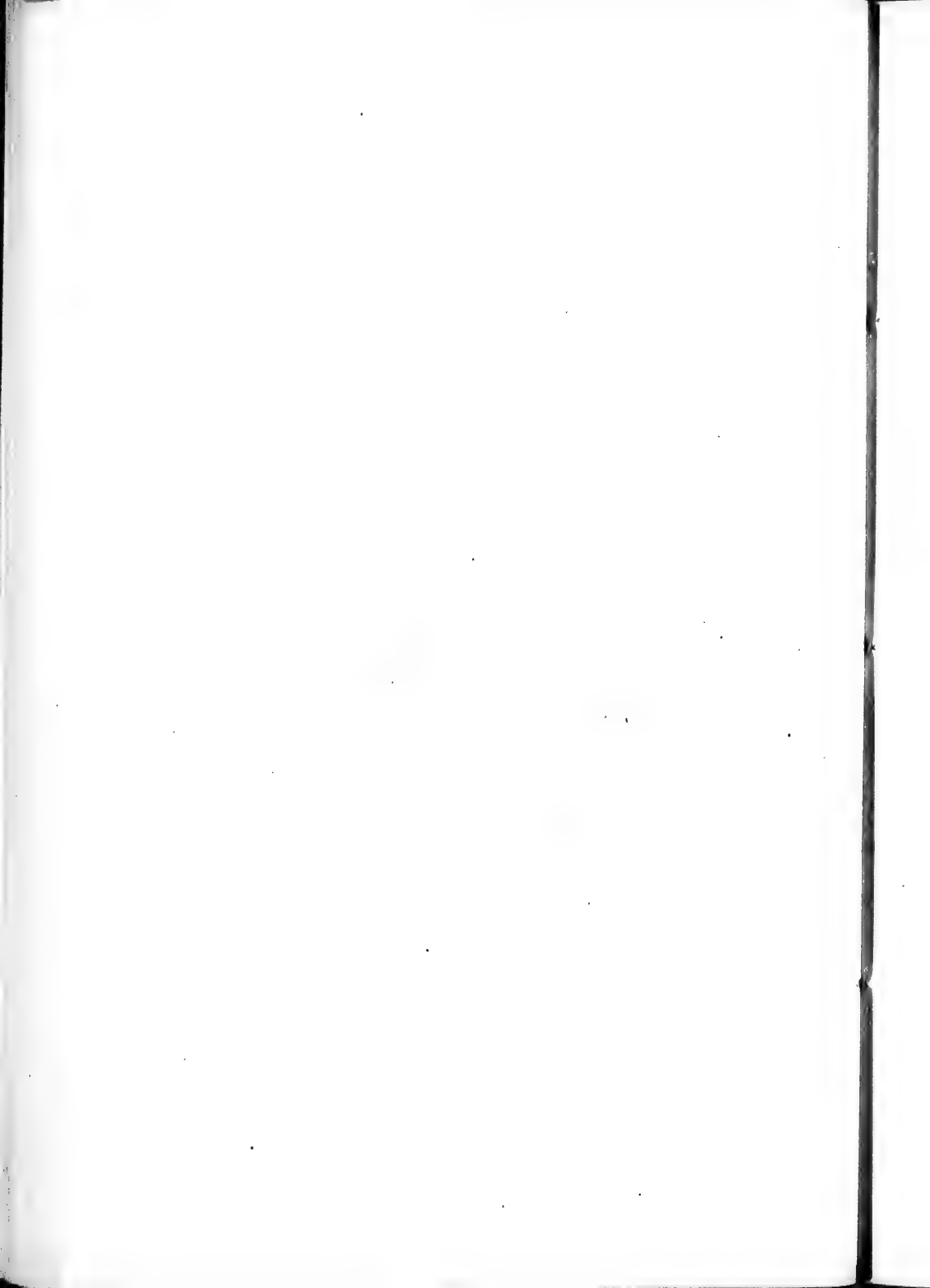
AT THE CATHOLIC CEMETERY.

When the procession reached the Catholic Cemetery, the gates were found closed and barred, and a crowd of three or four hundred men were collected, inside and outside the gate. They belonged mostly to the class of laboring men, but were composed largely of the rowdy element, being chiefly from the city, though a good number of *habitants* were present in their shirt sleeves from the rural parishes west of the mountain. The crowd was almost exclusively composed of French-Canadians. As the

hearse drove up to the gates, it was greeted by jeers and yells of defiance from the mob. Mr. Doutre and his friends alighted, and held a consultation as to what course to pursue, while the more violent of the mob compelled the driver of the hearse to turn his horses about and drive off the road. In the meantime the crowd was increasing every minute; friends and enemies of the Institute were constantly arriving from the city. Many of the mob were armed with pick handles, and they had also collected a pile of small stones inside the gates. As they saw the indecision of Mr. Doutre and his friends, they became bolder and more violent, and the excitement on both sides was rapidly rising. Mr. Doutre despatched bailiff Boucher to notify Mr. Deroche, the guardian of the cemetery, that the procession was waiting to enter, and asking him to cause the gates to be opened. That functionary replied that he was altogether powerless to open the gates in opposition to the mob. In about fifteen minutes after the hearse had been compelled to turn about, several of the mob seized the horses by the head, and, with kicks and blows, started them off on the opposite side of the highway, about twenty rods from the gates, a shower of stones following it in its retreat. At this moment the excitement was most intense, and a single blow from either side would have precipitated a collision. There were then nearly a thousand men present, of whom about one-fourth were Liberal French Canadians and English Protestants. These could easily have stormed the gates and put the mob to flight, and it was only by the earnest expostulations of Mr. Doutre, and a few others of the more prudent, that the English, enraged at the insult offered to the flag, and the French Liberals were dissuaded from precipitating a general battle. The friends of law were very generally armed with revolvers, and numbers of the rioters also had pistols, and if a collision had occurred, many lives would inevitably have been lost. Shortly after arriving at the gates, Mr. Doutre had sent off a messenger to the city, informing the Mayor and Chief of Police of the state of affairs. At four o'clock, as no word had been received from the authorities, the officers of the Institute decided to wait no longer, and they ordered the hearse to be driven back through the city to the Protestant Cemetery, where the remains of Guibord were once more placed in the vault.



MAYOR HINGSTON.—(See page 142.)



INCIDENTS.

When the hearse finally moved off, the mob made a rush as if to follow and attack it, but when they saw the friends of Guibord and a number of Protestants close in behind, they desisted. Very many of the crowd were semi-intoxicated, and were of the most degraded class of ruffians. While the hearse was standing before the gates they indulged in curses of Guibord and of the Institute. "We are guarding the Cemetery for the Fabrique. Take the cursed Guibord away; he shall never be allowed to enter here." A few Irish Catholics were among them, but the great majority were French-Canadians. The only fighting that took place occurred after the hearse had left the ground. A big *habitant* in his shirt sleeves, who had made himself conspicuous by his violence and loud curses, and who had seized the horses by the bridle, was struck on the head by one of the friends of Guibord with a stone, which laid the flesh open. A few moments after his assailant was attacked and beaten, but a crowd of friends came to his assistance and chased two of those who assaulted him over the hills, but without catching them. Several individuals were also struck with stones, but none were seriously injured. During the course of the afternoon, the grave dug for the reception of Guibord's remains was filled up by three or four of the rioters.

When word reached Mayor Hingston of the difficulty at the gates of the Catholic Cemetery, he was taking part in a public funeral to the late Chief Bertram, of the Fire Brigade. Himself and Chief of Police Penton, accompanied by fifty men of the police force, at once drove up to the Cemetery, which they reached at about five o'clock. By this time the larger part of the mob had dispersed, but those remaining immediately opened the gates and cheered the two officials as they drove up.

EXCITEMENT IN THE CITY.

The news of the riot flew like wildfire through the Quebec Suburbs and the Tanneries, and thousands expressed themselves gratified. In the evening excited groups could be seen all about the streets discussing the results of the riot. Some Catholics, while saying they were well pleased that the gates were clos-

ed upon the funeral, were sorry to hear that the mob had stoned the hearse, which in their eyes was a fearfully sacrilegious act. Mr. Doutre was denounced by many with fearful oaths and curses, and the feeling against him was singularly bitter. Among Protestants there was but a single opinion expressed, and it was that the law of the land would have to be enforced at any cost and at all hazards, and many were the expressions of satisfaction with which the news was received that the Prince of Wales Volunteers had been ordered to hold themselves in readiness. They rendezvoused at their headquarters on St. James street that evening, ammunition was supplied, and they are ready whenever required. The corps of the Victoria Rifles were also held in readiness for any emergency.

RESPONSIBILITY OF THE CHURCH AUTHORITIES FOR THE RIOT.

The ecclesiastical authorities as such, must be held responsible for the riot and for the successful resistance to the execution of the Royal Mandate. The populace were notoriously well acquainted with the bitter feeling on the part of those authorities against the Institute, and with the publicly expressed determination of the Rev. Mr. Rousselot to go to prison rather than obey that mandate. The *Nouveau Monde*, the organ of the Bishop, and the clerical press generally, had for weeks previously been filled with bitter complaints of the persecution to which the Church was being subjected, of the injustice of the decision of the Privy Council, and of the violence which would be done to the religious sentiment of Roman Catholics if the consecrated portion of the cemetery should be desecrated by the inhumation of the remains of an excommunicated man. The Bishop was well aware, as will be shown presently, that resistance was intended, yet neither from the pulpit nor from the clerical press was a single word uttered to calm the popular excitement or to counsel abstention from offering resistance to the burial. A single priest at the Cemetery gates, when the procession arrived, could have quieted the tumult and secured the peaceable execution of the order of the Privy Council, yet not one was present dressed in the garb of the clergy, or who could be recognized as such.

It was currently reported during the week of the burial that the *curés* of several of the rural parishes west of Montreal had,

upon the preceding Sunday, preached upon the subject of the burial, and had exhorted their parishioners to attend and see that the sacredness of the Cemetery was not profaned.

In an argument in the Superior Court on a rule *nisi*, which took place three weeks subsequent to the riot, and of which mention will be made, Mr. Jetté stated, on behalf of the Seminary, that they had informed the Institute on Sept. 1st, that the burial would be permitted, and that the resistance offered to the burial was made without their participation and against their will. On the same occasion, Mr. Doutre stated that he was able to prove that a priest clothed in his *soutane* had publicly used language to incite a crowd to go there and keep the gates shut; that Deroche, the guardian of the Cemetery, had men organized to resist the entry of the procession, and that the workmen engaged in repairing the Notre Dame Parish Church were given leave of absence that afternoon and incited to go there for the same purpose.

THE ACTION OF THE POLICE AUTHORITIES.

The Roman Catholic Bishop of Montreal communicated with the Mayor, warning him that he feared a disturbance. The following is the letter:—

MONTREAL, 2nd September, 1875.

MR. MAYOR:—

I believe it to be my duty to inform you that it was reported to me at a late hour last night that the Irish intended uniting with the French-Canadians, and to gather *en masse* to-day in front of the gate of the Cemetery, in order to oppose the entry of the body of the late J. Guibord.

It is needless for me to observe that this cannot be done without most regrettable acts arising. In order to prevent them, the police will be, without doubt, brought into service on the ground at a proper time, so that there may be no reason to deplore disorders which may arise should wise precautions not be taken.

I have the honor to be, truly, Mr. Mayor, with perfect consideration, your very humble servant,

IG. MONTREAL.

To His Honor the Mayor of Montreal

The Mayor thereupon saw the Chief of Police, who did not

think there would be any disturbance, and thought the sending out of a force was not necessary. It was only by the Mayor's orders that a force was despatched after the trouble was over.

OPINIONS OF THE CLERICAL PRESS.

The *Nouveau Monde*, which has always claimed to represent the opinions of the Bishop, in its report of the affair, took full part with the crowd in the Cemetery. The report ironically employs the expression "Le Sieur Doutre," when mentioning the counsel for the Institut Canadien, and says that he had a very shapeless (*avachi*) and sheepish air on the occasion. Guibord's remains are styled Mr. Doutre's *mort* (corpse), and the French Joe Miller was laid under contribution to furnish language to describe the affair which Mgr. Bourget's organ evidently considered a most entertaining comedy, especially as the laugh was all on its own side, and "Mr. Doutre had to go away with his *mort*, and defer the profanation which he rejoiced in accomplishing." Its report concludes by stating that "the demonstration provoked by le Sieur Doutre was neither flattering for himself nor honorable for his *mort*." In an editorial on the affair, the pious organ called upon the authorities to secure the fruits of the victory gained by the mob, and said:—

"In presence of a fact in itself so serious and threatening to the peace of this great city, and, therefore, of the country, it is the duty of all wise men and friends of order to use all their influence with the municipal authorities in the first place, and the Government next, to have the body of Guibord remain where it is now deposited. Whatever may be the legal question, the thing is now on an entirely different footing. There are measures of natural expediency which in imminent dangers know no other laws than those of prudence. Mr. Doutre ought to be warned that to desire actually to force the gates of the Cemetery and show his *mort* to the public is simply to drive the people to revolt. To persist in these moments of feverish excitement in invoking the strict letter of the law is useless talk. The people in these moments of feverish excitement cannot always be led or kept within the bounds that we should wish. Let there, therefore, be enough of wisdom to do or allow nothing of a nature to feed the flame that threatens to spread, and let Guibord remain in the vault

whence he never should have departed. Peace demands this, at least for the moment."

The *Minerve*, which is ordinarily taken to represent the views of the Seminary, commented upon the matter in a tone of ridicule. It suggested that Guibord's funeral had been postponed to wait the arrival of "a troop of Orangemen and fanatical Grits from Upper Canada who will be organized to strengthen the hands of our *Rouges*." It would betoken a crisis of no ordinary kind certainly to see elements ordinarily so hostile to each other leagued for a common object. The "clique Doutre Institut" is blamed for bringing about this extraordinary alliance, and it is warned that it assumes a heavy responsibility in acting as it does. "It is, thanks to this handful of wretched Rouges and apostates, that we are attacked in our religious sentiments, and are threatened with a fresh hubbub, worse than what took place on Thursday. These men without heart or patriotism do not fear to excite Protestant and English fanaticism against their compatriots, and to ally themselves even with the sects of Upper Canada to shed the blood of their brethren. The Rouge party and the Institute have dug their own grave in digging that of Guibord. These hypocrites who make a show of reproving the Orangemen of Upper Canada while allying themselves with them in persecuting Riel and Lepine, and in accusing the Lower Canada Conservatives of what they were doing themselves, are ready to-day to ask and receive the help of these same Orangemen." This silly story seemed to have gained credence to a certain extent, and rumors prevailed among French-Canadians that Toronto Orange leaders were in town on Monday.

OPINION OF A FRENCH LIBERAL PAPER.

The *Bien Public*, while maintaining that the Guibord case was one that should never have come before the courts, nevertheless, declared that the decision of the latter must be upheld, and that to oppose by force the execution of their judgment, above all of a decree of the Privy Council, is an act of unpardonable folly. "What will be the result of the resistance to the interment of Guibord? Does anyone believe the authorities will give in? Do they not know that the English Government would send an army if needful to have the judgment executed. Blood may be shed,

numerous arrests made, and severe punishment inflicted, but no one can hinder Guibord's remains from being interred."

LETTER FROM REV. CURE ROUSSELOT.

The Mayor received the following letter on Saturday from Rev. Curé Rousselot :

OFFICE OF THE WORKS AND FABRIQUE OF NOTRE DAME,
Montreal, Sept. 3, 1875.

MR. MAYOR,

If credence must be given to the rumors circulated, we have to fear that troubles of a more serious nature than those of yesterday will take place in the cemetery when the body of poor J. Guibord will again be presented there. It is impossible to foresee how far the exasperation of a nationality will go when it is attacked in its religious feelings. What a misfortune it would be if any blood were spilt! See, therefore, Mr. Mayor, if in your wisdom and your high position you can come to our assistance and avert events which might result in a sequel not now to be calculated for all our population, not only in this present instance, but also in the future.

I beg leave, Mr. Mayor, to offer my profound respect, and to ask you to believe me,

Yours humbly and devotedly,

V. ROUSSELOT, Priest, SS.

Curé of Notre Dame.

THE BAILIFF'S RETURN.

Tuesday, Joseph Boucher, bailiff of the Superior Court and the Court of Queen's Bench, made his return of the peremptory writ served upon the Curé and Fabrique commanding them to bury the remains of the late Joseph Guibord. After stating the time, place, &c., of serving the writs, the return goes on to say :—

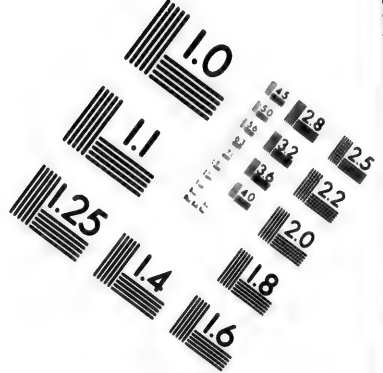
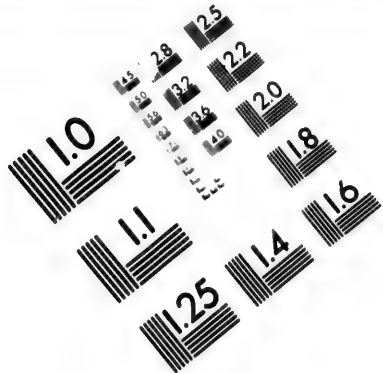
I further certify, that on the second day of September instant, the remains of the said late Joseph Guibord were brought to the Roman Catholic Cemetery of Cote des Neiges, for their burial at three o'clock in the afternoon, by the Institut Canadien, acting through their President, Joseph Doutre, Esq., Q. C., and Alfred Boisseau, their Secretary and Superintendent, but that the said

remains were not admitted into the said cemetery, the gates of the same being closed and kept closed, notwithstanding my notification to Benjamin Deroche, the guardian of the said cemetery, and the only representative of the said Fabrique I found on the premises, that the said remains were waiting to be admitted for their burial, and finally that the remains of the said Joseph Guibord were not interred in the said cemetery, but were reconveyed to the vaults of the Mount Royal Cemetery, where they remain unburied.

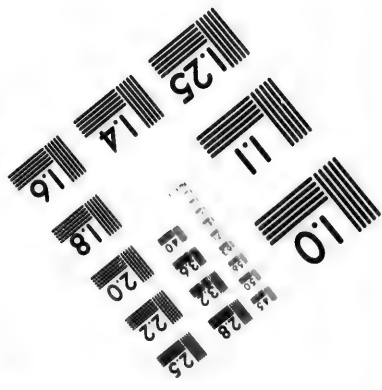
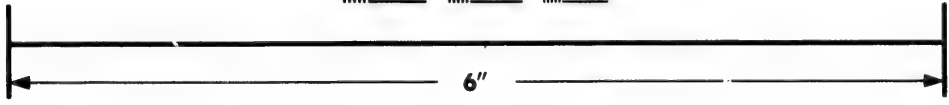
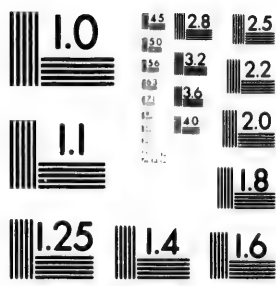
(Signed) JOSEPH BOUCHER,
B. S. C., Court of Queen's Bench.

GUARDING THE PROTESTANT CEMETERY.

Rumors having reached the trustees of the Protestant Cemetery that an organized attack was likely to be made upon the vaults to obtain possession of the body of Guibord, those gentlemen applied to the authorities to place a guard over the vaults. On Monday evening seven policemen and nine cemetery employés, under command of Sergeant Richardson, guarded the vaults of the Mount Royal Cemetery. They were all armed with Smith & Wesson navy revolvers and rifles. About midnight, an alarm was given for the noise of crackling brush on the mountain slope, just back of the vaults, and the sound of voices speaking French. The entire force was called out and disposed so as to sweep the area in front of the vaults with a cross fire. Nothing more was heard, however. During the following day several squads of men of suspicious appearance were observed loitering about the grounds, and Mr. Spriggings felt sure that they were spies. On Tuesday evening Sergeant Richardson and his squad of six policemen kept guard, as they did Monday night, assisted by the employees of the cemetery. These were accompanied by Constable Walton, of Outremont, and by four civilians from the city. Two of the latter had a relative lying in the vault, and were naturally filled with righteous indignation that a band of ruffians contemplated the sacrilege of breaking open the vault where the remains of the dead lay awaiting interment. Every man was thoroughly armed, and ready for any emergency. Nothing unusual occurred until shortly after three o'clock in the morning,



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when one of the sentinels came running in and said he saw three lights moving about in the woods a short distance in rear of the vault. The whole force immediately turned out, and stationed themselves in a position where they could command the approaches to the vault from both sides. Footsteps of persons cautiously moving about were very plainly heard a short distance from the vault, but the lights were concealed. At the same moment the sound of crackling brush was heard in nearly the opposite direction beyond the front gate of the cemetery. After a few minutes the sounds died away and nothing more was seen or heard until morning. It was believed the footsteps were those of spies reconnoitring, and as they were near enough to see the weapons of the compact body of armed men, they did not venture an attack. For several nights succeeding circumstances indicated that persons were loitering in the woods about the cemetery, but no attack was made upon the vaults. The guard was, however, kept on duty until the final removal of the remains of Guibord.

LEGAL PROCEEDINGS AGAINST THE RIOTERS.

On the 3rd September, Mr. Doutre made an affidavit which stated that the public peace had been threatened by the riot at the Catholic Cemetery. This, with other documents, was submitted to two magistrates, which action the law required prior to calling out the military force to keep the peace during the next attempt at burial, the day for which, for prudential reasons, was indefinitely postponed. Depositions were made against a number of the rioters who had made themselves the most prominent, but the authorities took no steps to bring them to justice. On the opening of the criminal term of the Queen's Bench, however, Mr. Justice Ramsay alluded to the riot at the cemetery, and instructed the Grand Jury, of whom, as usual, one-half were French-Canadians, to give it their attention. Indictments were accordingly laid against fifteen of the rioters, and an equal number of witnesses testified before the Grand Jury in support of the indictments. Although the evidence was most decisive and explicit against several of the accused who had committed overt acts of violence, the Grand Jury refused to bring in any bill against them. This ended all attempts to punish the authors of this most

daring and criminal defiance and resistance of the express Order of Her Majesty's Privy Council.

SUIT FOR DAMAGES AGAINST THE FABRIQUE.

On the 23rd September, Mr. Doutre applied to Mr. Justice Mackay for the issue of a rule *nisi* for the Fabrique to show cause why they should not be condemned to pay a fine not exceeding \$2,000 for their failure to inter, or allow to be interred, the remains of Joseph Guibord, on the 2nd September. The rule was ordered to issue, returnable on the 27th of the same month. On that day, before Mr. Justice Johnson, Mr. Jetté for the Fabrique, asked the Court to quash the rule, for the reason that it had not been legally and regularly proved that the Fabrique had neglected to obey the order, holding that the bailiff, in making such allegations in his return, had transcended his functions. Moreover, he claimed that without a formal return and certificate attached thereto by defendants, the Court could not grant the application of appellants.

Mr. Doutre replied that he was able to prove that the Fabrique or its officers were at the bottom of the disturbance at the Cemetery, and, therefore, they should be fined. As to the writ of *mandamus* not having been returned by the party to whom it was addressed, the objection was null, as the general custom of the Courts in this country had not insisted upon such a thing.

His Honor asked if the gentlemen of the Fabrique had made a return that they had permitted the grave to be dug, would not that have been a sufficient return.

Mr. Doutre answered that he supposed it would, but everyone would have laughed at it. The excuses presented by Mr. Jetté were mere subterfuges, and if they were admitted, every writ that would issue from this Court could be evaded and disobeyed, and the Court would be powerless to enforce its own decrees.

On September 30th, Mr. Justice Johnson gave his judgment on the application ordering the rule to be discharged. He held that there had been no proper return of the writ before the Court, and it was therefore impossible to judge whether it had been complied with or not. The Court needed to have evidence that there had been a refusal to comply with the writ, and no such evidence

had been presented. The bailiff had no authority to make a return, and the Court could not accept his statements of what had occurred when his functions had ceased. It had not been proved that the Fabrique had neglected to obey the writ, and, therefore, they could not be fined.

On the 15th September, Mr. G. W. Stephens, a member of the Montreal City Council, published the following letter in the WITNESS:—

SIR,—After many of us had left the Council, supposing that the adjournment was carried, the Mayor, in reply to Ald. Rivard, made the explanation which you report. In my opinion it is a very lame explanation. He had, by his own confession, a letter from the Bishop, warning him that trouble was expected. This letter he had at eleven o'clock of the morning of the day the funeral was to take place. Instead of ordering the Chief of Police to send a detachment of men to protect the funeral, he contented himself with asking the Chief if he expected trouble, and was contented with the answer that no trouble was expected. When word was brought in at about half-past four the greatest alacrity was shown in proceeding to the scene of disorder, but, as usual on such occasions, the Mayor and police were too late. When the Mayor arrived on the scene with his army they were just three hours too late. If proper measures had been taken in the morning, the funeral would have taken place, and the city would be spared its present disgrace. If no blood was shed, it was due to the forbearance of the funeral party, and not to any wise precautions of the Mayor.

The Mayor says, "he was no more required to go with the police than any of the two hundred magistrates of the city." This must be sarcasm. He knows full well that none of the other two hundred are entrusted with the honor of our city as its chief magistrate. He says also that "*had circumstances been different, we would have seen a partial disorganization of the force.*" This means that the police force would not have acted if it had been called upon. This is true, for I saw an official report that only *twenty-three men of the force* were to be relied on in such an emergency. Now, it is well for the citizens to note this fact, for it proves conclusively that in a religious riot the force

would be useless. For this reason, the Mayor and Chief of Police decided to face the crowd alone. There was no danger. The crowd recognized a friend in His Worship, and were "quiet in a moment or two."

Why was it that in the face of this "disorganization" of the Police force, the Mayor did not make any effort in the morning to provide against any disturbance? To put a very mild construction upon the Mayor's conduct, he has committed a very grave error in not making the slightest provision for the maintenance of law and order on this occasion. In the case of the anti-vaccination riot the same neglect appears. He, along with the attorney, Mr. Roy, was appointed to bring the rioters to justice. So far, no practical result has been reached. If our city is now under the disgrace of being ruled by mob-law, it is due to errors of this kind.

The Mayor concludes his speech by saying that "when he undertook to be Mayor he did not undertake the task of keeping all the surrounding municipalities in order." By section 9 of the charter the Mayor is an *ex-officio* Justice of the Peace for the city and district of Montreal. Our police and firemen are continually doing duty outside our limits. It is only when a peaceful funeral is in question that this new theory is promulgated. One thing is certain, however, that if more vigor is not infused into the office of Chief Magistrate the city will descend deeper into the mire.

Yours truly,

G. W. STEPHENS.

IX.

PASTORAL LETTER OF THE BISHOP OF
MONTREAL.

HE THREATENS TO CURSE GUIBORD'S GRAVE.

On the 8th of September, Bishop Bourget published the following pastoral letter in relation to the burial of Guibord in consecrated ground.

CONCERNING THE ECCLESIASTICAL BURIAL DEMANDED FOR AN
UNFORTUNATE CATHOLIC DEAD IN THE DISGRACE
OF THE CHURCH.

Ignace Bourget, by the grace of God, and the Apostolic See,
Bishop of Montreal, etc.

To the secular and regular clergy, to the religious communities, and to all the faithful of our diocese, the grace and blessing of our Lord:

It is for us, our very dear brethren, a necessity as well as a duty to raise the voice to-day to endeavor to appease a certain agitation which has taken hold of minds, and which, fermenting from day to day, may lead us to some fatal catastrophe. We have not to recall to you the lamentable fact which has caused to you so bitter a grief, for it is so well known to each of you and so strongly engraved with all its unhappy circumstances, that it will transmit itself without doubt to the latest posterity. For that which hath roused you up in such large numbers is the fear that your Cemetery, which you justly venerate as a holy place, might be profaned by the burial of a man dead in the disgrace and under the anathema of the Church. This tidings rightly alarmed the religious feeling of the Catholic population, and shocked the multitudes; therefore was it why one felt himself obliged to a pub-

lic but peaceable demonstration, to prevent the profanation of a sacred place, where repose in peace our religious ancestors waiting the great day of the resurrection. By this spontaneous demonstration, to which your heart alone has inspired you, you intended to testify to your religious feeling for the holy place which the Church has blessed, because after your decease your bodies will be laid there beside those of your fathers, to peaceably await the sound of the terrible trumpet which will awake the human race from the slumber of death and bring forth all men from the dust of the tomb. We have had, our very dear brethren, to examine with the most scrupulous care the religious conviction which attaches us to the cemetery as to a holy place, to a consecrated ground and to a sacred field, where will be placed the good children of the Church, there to await the arrival of the Sovereign Judge, while their ashes mingle with those of the saints, who like them have lived and are dead in the peace of the Church. We have had at the same time to admire the calm and moderate conduct which you manifested at a moment when everything induced fear lest one might come to blows, and lest blood might have been shed, which would have been considered by all parties as a very great calamity. For our part we would have supremely regretted this calamitous conflict, for many reasons which you can, our very dear brethren, divine and appreciate. Let it be sufficient for us to remark to you that this effusion of blood would have been a fresh profanation of the holy place, although we might have taken measures, so far at least as was in our power, to avoid this calamity; but if, on the one hand, we have managed all things so that the public peace was not troubled, we were, on the other, occupied with means to be taken so that the honor of the Holy Church might be respected, and that the holy place should not be profaned. This was to declare, in virtue of the divine power which we exercise in the name of the Pastor of pastors, that the place where the body of this rebellious child of the Church would be deposited should be made separate from the rest of the consecrated cemetery, so that it would only be a profane place. For we do not need here to prove to you that in the solemn act of our consecration to God, full power was given us to bind and to loose, to bless and to curse, to consecrate persons, places, and temples, and to interdict them, to separate from the body of the Church the mem-

bers who dishonor and outrage her. to hand over to Satan those who hear not the Church, in order that they may henceforth be considered as pagans and publicans, so long as they return not to God by sincere penitence. It is upon these incontestible and uncontested principles of this divine authority, that, desiring to maintain in all its integrity the discipline of the Church concerning the burial of its children, and to prevent, at the same time, all disorder for the future, we declare by these presents, in order that no one may be able to plead ignorance, that the part of the Cemetery where the body of the late Joseph Guibord should be interred, if ever after this it is buried there in any manner whatever, will be undone and will *ipso facto* remain interdicted and separated from the rest of the Cemetery.

Such is, our very dear brethren, the declaration we have to make to you, in order that you may not have to fear that in the present case your Cemetery can lose its benediction, or that the sacred right which the Church has over places which she sanctifies and blesses, can be sacrificed and trodden under foot; it follows from this that there remains no pretext for any person to offer violent opposition to the body of this unfortunate brother being deposited in any part whatever of the Cemetery, since by the same this part will become interdict and separated from the holy place.

Be the present pastoral letter read from the pulpit of all the churches of this city, and of its environs, in which the public office is celebrated, the first Sunday after its reception.

Given at Montreal under our hand and seal and the counter-signature of our Secretary, the eighth day of the month of September, one thousand eight hundred and seventy-five.

(Signed,) IG., EV. DE MONTREAL.

J. O. PARR, Chan. Secrétaire.

THE CURSE LATERAL OR THE CURSE PERPENDICULAR.

The day succeeding the publication of the above pastoral, the following letter, which has since been copied in papers all over the world and was read with much interest, was published in the Montreal Witness:

DEAR SIR,—In the most extraordinary letter of the Roman Catholic Bishop of Montreal, published in this morning's *Gazette*, the Rev. prelate states that if Guibord's body had been buried

"measures would have been taken to interdict the place where it lay," making it "a cursed spot to be held in execration;" he also implies that if the body is finally buried in the Guibord lot, the ecclesiastical curses will be let loose, and that the spot at present consecrated, will wilt and wane and wither under the awful malediction of an insulted bishop.

Now I am really anxious about poor Mrs. Guibord, the wife of the late printer. Mrs. Guibord died a Catholic, was willingly buried in Catholic soil, is in no way entitled to be cursed, or rest in cursed ground. She, poor woman, did not belong to "the Institut," or merit in any way the terrible doom of lying in an execrated grave. I do not know whether in dying she received extreme unction, but it is highly probable she did; anyway, she was buried in consecrated ground as a Catholic woman should be buried.

Now, as I said before, I am really anxious about Mrs. Guibord. If Guibord's grave deserves to be cursed, I suppose it must be cursed; but surely poor Mrs. G. is not to suffer for her husband's faults! How is this curse going to work? Will it be a perpendicular curse, working down, or a lateral curse, working sideways. If lateral well and good; if perpendicular I think it manifestly unjust and unchristian.

A lateral curse three feet deep might just cover Guibord. It might commence at the right hand side of the coffin, close to the lid, work down three feet, and then work out over, and under, and through the coffin, say ten feet on the coffin's left side. This kind of a curse would surely meet the wants of the case without interfering with the vested rights of other corpses. There would, I think, be plenty of room for the curse to work, or if it should be found that it was cramped, why the Bishop might increase the area by cursing the top soil (three feet deep) on the left side of the coffin, as many more feet as to him seemed necessary for the just demand of the malediction.

Not being well posted, however, on the way in which curses work, this lateral idea may, for all I know, be out of the question; but anything seems better than the perpendicular curse. Why a perpendicular curse working down would curse poor Mrs. Guibord, who would be under Guibord! It would not only work horrors among the few poor bones of the printer, but it would damn and

anathematize his poor wife, who was buried as all good Catholics are buried, and never did anything calling for bell, book, or candle. Possibly the Bishop might curse three feet down, then leave his blessing on the next three feet, and, then, curse on as deep as he liked ; but I question whether he would be able to do this. Of course, episcopal power is very great, but it seems to me that a curse once let loose must go either straight on or straight down without let or hindrance.

The fact is a perpendicular curse would suit nobody. It would not suit the Bishop, for he does not surely want to curse a consecrated grave, filled by a poor woman who certainly has done nothing against the Church since she died. If Mrs. Guibord died a good Catholic entitled to Christian burial, she cannot since have become a bad one, and forfeited her right to rest in holy ground. Besides the Bishop does not want to make Mrs. Guibord uncomfortable ; he only wants to make her husband uncomfortable.

Then, again, the perpendicular curse would not suit the Roman Catholic public. Suppose the Bishop sees right to curse several other heretics whose dead have been holy dead. Are the holy dead to lie under a curse, buried by the Church, yet blasted and banned by the Church ?

And surely the perpendicular curse would not cause outsiders to look with reverence or awe on the Church of Rome. Better not curse at all than give way to blundering curses like these. Better to bury Guibord than to have to curse the heretic husband at the expense of the orthodox wife. " Fair play is a jewel," and outsiders always expect to see it whether in a cricket field or in a Church.

I close with a wish for more light. Is the coming curse to be lateral or perpendicular ? Will orthodox Mrs. Guibord lie in an execrated spot because heretic Mr. Guibord deserves to be cursed ? These are important questions. Yours faithfully,

AN ENQUIRER.

Montreal, 9th Sept., 1875.

QUEBEC BISHOPS' PASTORAL.

At a convention of the Quebec Bishops, held in Quebec in October, to decide certain questions, amongst which was that of the Guibord burial, the following opinion was adopted :—" Un-

questionably ecclesiastical burial is not as holy as the sacraments, but it does not the less appertain wholly and solely to the judgment of the Church. We mean ecclesiastical burial such as defined and regulated by canon law. That is to say, not only the prayers and religious rites which are used at funerals, but also the spot sanctified and specially consecrated by the prayers and blessings of the Church. It may be said that the deprivation of the honors of ecclesiastical burial carries with it degradation and infamy, and that thus considered it falls within the jurisdiction of the civil authority charged to protect the honor of citizens. We answer that the dishonor and infamy consist rather in the revolt of a child against his mother; and that nothing can wash away the stain of a grave disobedience which perseveres until death. * * *

But, O dearly beloved brethren, with grief we must proclaim it, an affair too sadly famous proves to us that the Catholic Church in Canada is threatened in her liberty and her most sacred rights, and the crowning of our affliction is that the Church can but exclaim with the prophet, 'I have brought up children and exalted them, but they have despised me.' (Isaiah i. 2.) The first authors of this outrage have been brought up on the knees of a Catholic mother. In their infancy they have partaken of the divine banquet. They have received the indelible character of confirmation, and yet to-day in spite of the revolt they call themselves Catholics that they may force the entrance of a cemetery consecrated by the prayers of the Church, and by her designed for the burial of her faithful children. To palliate this criminal usurpation they have invoked the pretended Gallican Liberties, as if Catholic unity founded by Jesus Christ on the supreme authority of Peter and his successors were but an empty name. What authority is that which, by invoking his liberties, the subject can escape? What prince, what republic, would acknowledge such a principle if appealed to by a Province; notwithstanding the oft-repeated declarations of the constitution and the supreme tribunals of the State?"

ANOTHER PASTORAL FROM MGR. BOURGET.

On October 17th, another pastoral from Bishop Bourget in reference to the burial was read in the Roman Catholic churches of the city. In its commencement it referred to the excitement

made "around the body of a certain man as to whose name we should like to be silent," and declares its purpose to be to give explanations in regard to "facts wrongly reported" and principles wrongly represented: "The Holiness of the Catholic cemetery" is the subject first treated of, and the Bishop argues that everything devoted to the use of the Church is holy, its sacraments, its doctrines, its temples and its cemeteries. The latter are especially consecrated to receive the "bodies of those who die in peace with the Church, and God ratifies in heaven all the benedictions made by the priests on earth." "This benediction is accompanied with ceremonies mysterious and full of grace." The cemetery is "sprinkled all over with sanctifying and holy water." It has a cross planted in it, "specially blessed and incensed," to protect the remains of the faithful sleeping under its shadows from "incursions of the devil" and to secure "that their souls be admitted into the company of the angels of peace." This setting apart of a spot where her children may rest in peace till the resurrection is dwelt on as a touching instance of the tenderness of "Holy Mother Church." This consecration of cemeteries is declared to be of great antiquity, and the Catacombs of Rome are appealed to for proof of how the early Christians took care not to be buried "pell-mell with infidels, heretics and schismatics." This branch of the pastoral, which contains much pious reflection and ejaculation, concludes as follows:—

"Hence it is easy to conclude that one could not without regret behold in the cemeteries the bodies of those who during their life might have scandalized their brethren and afflicted religion by their impieties, their extortions, their debauches, by their negligence, to attend the holy ordinances and receive the sacraments which give eternal life, and should have died without giving signs of repentance or penitence."

The second head of the pastoral treats of the "justice of the decision given by the Church against the said Joseph Guibord," and is a summary of the pleas advanced on behalf of the Church in course of the litigation in this case. It quotes the Roman Ritual as to the classes to whom ecclesiastical burial is to be denied; claims that the Church enforces its provisions impartially against great and small, rich and poor, and goes into the history of the Institut Canadien and of Guibord's connection therewith

to show that he was righteously denied such interment. It is true, the Bishop says, he had not been warned and denounced by name, "because he was not of the rank of those excommunicated persons whom it would have been necessary to flee from and shun during his existence, it not being allowed to have any relations with him in the business of life." Nevertheless, the Bishop maintains that he was righteously under the sentence of major excommunication directed against all who belonged to the Institut Canadien.

The decision of the Privy Council is next reviewed. "Far from us, our very dear brethren," says the Bishop, "is the thought of appealing to public opinion from the decision of Her Majesty's Privy Council in this unfortunate affair. This, we understand perfectly, is neither the time nor the place therefor." Mgr. then refers back to his pastoral of 8th September last as a declaration of his policy in this matter, and where, it will be recollected, he announced his intention of cursing the grave. "We have not desired on this occasion to avail ourselves of the rigor used by the ecclesiastical authority shortly after the conquest, in causing to be disinterred and thrown out of the cemetery the bodies of three soldiers that had been buried there against the rules of the Church." The Bishop thus takes credit for acting very generously in this Guibord affair. By cursing the grave and thus separating it from the rest of the consecrated ground, he says, "Without entering into conflict with authority we have been able to safeguard the liberty of the Church." He then goes on to quote from the recent pastoral issued by the Council of Bishops in this Province the part setting forth the claims of the Church of Rome to supremacy over the State, and those of its clergy and ecclesiastics to immunity from civil process, and reiterates rather tiresomely their right to act towards Guibord as has been done. In regard to the Gallican Liberties which have been appealed to on Guibord's behalf, the Bishop says they are not considered even in France but as real servitudes wresting from the Church her lawful liberties, and cannot be put forth to authorize in Canada an "encroachment upon the rights of the Holy Church." The Bishop proceeds:—"Allow us, in conclusion, to observe to you, our very dear brethren, that this decision might not have been given if the noble Lords who compose the Privy Council and

who advised Her Majesty could have been able to assure themselves that it would have tended to strangely grieve the bishops of this country, whose loyalty has never been denied; to wound the religious feeling of a devoted people who have on all occasions joined fidelity to their Sovereign with attachment to their religion; to cause Catholics in this country to fear that it is wished to deprive them of their religious liberty; to cast into this province a brand of discord which it might be very difficult to extinguish; and to excite between citizens of different races and religions antipathies and hatreds that might have very serious results. O may God, our very dear brethren, preserve us from these evils, and, to obtain grace from Him, let us address by fervent prayers the immaculate Virgin, who, in her pure and spotless conception, has crushed the head of the venomous serpent that with its poisoned breath, fills the whole world with the most damnable errors. Let us implore the powerful succor of this august mother of God, whose compassionate heart is always open to the cries of the poorest and most wretched."

X.

CORRESPONDENCE BETWEEN ARCH
BISHOP LYNCH AND
MR. DOUTRE.

The three following letters were published in the *Toronto Globe*:—

THE ARCHBISHOP'S FIRST LETTER.

SIR,—Would you permit me to say a word in the Guibord case? It may occur in Toronto at some future time a branch of a condemned tree might be forced to take root in our midst, and we might, perhaps, prevent mischief by explaining in anticipation what we should do in such a contingency.

But first let me cite a case in point. Suppose the Fenian organization, properly so-called, were established here and put under the ban of the Church, as is the Institut Canadien; and suppose one of the members at his last moments refused to renounce the society and accepted in preference to die without the Sacraments of the Church, would the Privy Council of the Queen absolve the memory of the man, and force us to give him ecclesiastical burial? I presume not; nor would the Protestants, especially the Orangemen, willingly acquiesce in what they would consider an unjust decree of a Catholic Sovereign, in a like case where they would be the aggrieved.

I know the mind of our Protestant friends, and give them credit for desiring to know both sides of the question. They, perhaps, would like to know what is really the Institut Canadien, about which there is so much trouble. The French-Canadian, in coming under British rule, gained one immense advantage—he was cut off from revolutionary France at a time when infidelity commenced to permeate and ruin all classes, especially the lower, of French society; and hence the descendants of the French

immigrants grew up a religious and loyal people. But, in the course of time, well-to-do Canadians revisited France, and brought back the seeds of irreligion and too much independence. To foster and perpetuate these evil plants they formed a society called the Institut Canadien, and filled their library with books fetid with the most rampant infidelity, such as was destroying the faith and morality of France. The Bishop of Montreal, as a good pastor of souls, as a good father, who would not place bad books in the hands of his children, wished to have these books removed, or, at least, locked up, so that all comers would not have access to them; and the Bishop further required that a priest of his appointment should watch over the morality of the library and the members of the Institut. Was this beyond the faculties of a Bishop of the Catholic Church in his treatment of those who professed to owe him obedience, and who wished to receive from him the Sacraments? No sane man would say that it was. The Institut Canadien would not comply with the reasonable demands of the Bishop, consequently His Lordship was obliged to warn them if they continued to disobey he would be obliged to cut them off from communion with the Church. The Institut Canadien retained its library and continued its opposition, and were consequently proscribed. The evil ceased to become greater because good Catholics no longer join the Society.

I ask any of our Protestant friends of the various religious communities, would you not, if the case were yours, refuse communion to the man who would disobey the formal injunction of your Synod or Conference?

But now comes the question respecting the bodies of excommunicated persons after death. But not wishing to intrude too much on your space, I propose, if you permit me, to continue these remarks in another communication in your issue of tomorrow.

I am, sir, your obedient servant,

† JOHN JOSEPH LYNCH,

Archbishop of Toronto.

St. Michael's Palace, Sept. 9th, 1875.

THE ARCHBISHOP'S SECOND LETTER.

SIR,—There is a *quasi* consent that each religious community

should have a cemetery specially consecrated or set apart for the burial of the bodies of the members who died in communion with them, and it would be considered an outrage for the State to force them to bury with religious ceremonies the body of one of their members who, whilst he was alive, was excommunicated from their Church.

But the State steps in and says, this man bought a lot in the cemetery, and it can now be used for his burial.

But the lot was sold with this condition expressed or understood, for the burial of those only who died in communion with the Church, so that, like any other sale of a lot under condition, when that condition is wanting the land is forfeited. The Catholic Church provides for the burial of those who die out of her fold, for in every cemetery a place is set apart for the burial of such persons.

It appears to me that the State, in the case of Guibord, who died out of the pale of the Church, is manifestly interfering in matters not of its competency, and consequently need not be obeyed, for conscience' sake; but this interference is rather to be tolerated to avoid a greater evil. If the Guibord case happened here I would hold myself neutral; the State could use its power of force and bury the body in our consecrated cemetery, but certainly not with any active assistance on our part. I would then order the grave or plot to be fenced in, and I would then proceed to re-consecrate the rest of the cemetery.

I might be asked, Do we think the ashes of a notorious sinner who died unrepentant would injure the souls or bodies of those whose bones lay in the cemetery? I would answer no—nor would the bones of mad dogs or other unclean animals contaminate the cemetery. This is a subject to which we may return again. But such would shock all sense of humanity and public decency; then why make any trouble about the Guibord case?

We don't make the trouble; the trouble is caused by the State forcing the body of an excommunicated man into consecrated ground not under the direct jurisdiction of the State. The clergy hold themselves neutral, as they should. The State is strong enough to force its enactments, even when they are unjust. If the State think well to shoot down the people, it is the State's own business; and if the people resist and expose themselves to

be shot, that is their own business too; if the clergy wish to help the State, and advise the people to keep quiet, that is their own business also. The Church tolerates without resistance at present the robbery and spoliation of its most sacred property, as witness the persecution in Italy and Germany, but then she does not help her enemies in their spoliation.

The Catholics of Montreal feel outraged at having their cemetery about to be desecrated by the introduction of the body of an excommunicated man. I don't wonder at it, but I would say to them, don't expose your lives in resisting the State; if you are commanded to renounce your faith, then suffer martyrdom rather than obey imperial mandates, as the early Christians did.

You ask again, "Why consecrate cemeteries?" This is a question that all religious bodies may answer as well as myself. Are we disposed to sympathize with the irreligious father who, speaking over the body of his own son, gloried that he was unbaptized, and that his body was now some use to humanity, inasmuch as it fertilized the earth—dung to dung?

Our idea of the sanctity that hallows the body after death is based upon the words of St. Paul, "Know ye not that your members are temples of the Holy Ghost, who is in you, whom you have from God, and you are not your own. For you are bought with a great price; glorify and hear God in your body." (1 Cor., vi., 19, 20.) And again, "If any man violate the temple of God, him shall God destroy, for the temple of God is holy, which you are." (1 Cor., iii., 17.) And again, "I know that my Redeemer liveth, and at the last day I shall rise out of the earth and I shall be clothed again in my skin and in my flesh I shall see God." (Job 19.)

Hence the bodies of the just will be joined to their glorified souls and enjoy the beatific vision of God; hence our reverence for the bodies of the dead; hence the vice of impurity is so execrable to God.

I am, sir, with much consideration,

Your obedient servant,

† JOHN JOSEPH LYNCH,

Archbishop of Toronto.

Toronto, Sept. 10, 1875.

MR. DOUTRE'S REPLY.

SIR,—From the high tone of some of the public utterances of His Grace the Archbishop of Toronto, I have conceived, in common with others, a deep feeling of respect for his talents and his sincerity of purpose. His letters on this Guibord case, notwithstanding, or I should say on account of, the errors of fact they contain, are not of a character to diminish that respect. His Grace, knowing evidently nothing of the main facts, and having to explain to himself and to the public a conflict which has put the whole American Continent in commotion, imagined everything which could make a plausible defence of his Montreal colleague's position. When he learns that his facts are fictitious and imaginary, it will hardly be necessary to discuss his conclusions.

The parallel attempted to be found between the members of the Institut Canadien and the Fenians has no other merit than being a piece of diplomacy to prepare the ears of his audience. However, I have no objection to accept the parallel in its entire bearing, provided it be treated from a Lower Canada standpoint. The Catholic Church in Lower Canada partakes of the character of an Established Church. The laity constitutes, in each parish, a corporate body as regards the properties of churches, cemeteries, and parsonages. These properties belong to the parishioners, and not to the bishop or the *curé*. The *curés* have the right to recover, before the Courts, the tithes from the parishioners. The Church, composed of the *curé* and laity, has the right to collect through processes of law any amount of taxation for the building of churches, parsonages, and the purchase of burial grounds, and the repairs and maintenance of the whole. These things do not exist in Ontario. There everything is voluntary, and I am not prepared to express an opinion on the respective rights and duties of the clergy and laity. But the condition of things in Quebec has constituted clear and well-defined rights and duties for the two bodies. Decisions from the highest Court in Quebec, a Court uniformly composed of a majority of Catholic Judges, have laid down as a rule formally approved of by the Church, until the recent changes in the Constitution of the Catholic Church, that the old ecclesiastical law of France was still the ecclesiastical law

of Lower Canada. The *Manuel des Curés*, by Mgr. Desautels, Curate of Varennes, one of the honorary attendants of the Pope, and honorary Canon of the Montreal Bishopric, published in 1864, contains as a preface a circular letter of the present Bishop of Montreal, commending the book to the clergy of his diocese. At page 17 it says:—"No one can doubt that the common ecclesiastical law which obtained in France, before the cession of Canada to England, is the ecclesiastical law of Canada."

Viewing the case of the refractory Fenian in the light of these laws, I would not question the right of a priest to refuse communion to him at his last moments; but I would unhesitatingly deny him the right to refuse ecclesiastical sepulture to his remains. From time immemorial, Catholic France, both at home and in the colonies, has maintained that the sepulture of the dead, even in the times when ecclesiastical courts were in full operation, was exclusively cognizable by civil court. *Excommunication major* only could justify the refusal of ecclesiastical burial, by separating, in a measure, from the Church the object of that excommunication. I need not tell an archbishop how such excommunication should be pronounced to be valid; but for his readers and mine, I must say that the law never allowed excommunication unless it were publicly denounced and personal, after admonitions. No secret or collective excommunication has ever been admitted as valid. In fact, no system of public laws could co-exist with a collective or secret exclusion from an Established Church. The French ecclesiastical and public law, as left to us at the time of the treaty of cession, goes farther. It claims for the civil courts the rights to examine whether excommunication, when pronounced, is conformable in its causes with the canons or not. When the case was argued here, numberless decisions of the French Courts were cited, declaring null and void excommunications pronounced with all the external formalities of the law, in order to reach the consequences of excommunication. And let me remark, that not one single case could be cited contradicting the doctrine above mentioned, both as regards the absolute necessity of a public and personal excommunication, and as to the right of enquiring into the cause of excommunication.

Bringing these principles to bear on the Guibord case, I must

tell Archbishop Lynch (1) the members of the Institut Canadien were never excommunicated, even collectively; (2) Guibord was never excommunicated, either collectively with others or personally. An archbishop or one hundred bishops would lose their time and words in asserting the contrary. If facts of a past age may be distorted, and made convenient to support a system, contemporary history is beyond such manipulation.

[Mr. Doutre then goes on to narrate the circumstances in regard to the Institut at the time of Guibord's death. The latter had been refused communion, but that—a matter of daily occurrence—did not amount to excommunication.]

The only excommunication which was ever pronounced in Canada, according to the rules of ecclesiastical law, was that of a newly married couple, who had gone to a Protestant minister to be married. This was some six or eight years ago, at Rimouski. Guibord not being excommunicated, any reasoning founded on that error falls to the ground.

THE INSTITUT CANADIEN.

After twenty years of uniformity in the calumnies heaped upon this Society, one feels refreshed in hearing something new in the shape of misrepresentation. I do not in any way impugn the sincerity of His Lordship. I am sure he believes what he says. "In the course of time, well-to-do Canadians revisited France, and brought back the seeds of irreligion and too much independence." The only French people with whom the Institute ever communicated, before incurring the displeasure of the Bishop of Montreal, were Abbe Charbonnel, who became Bishop of Toronto, and Father Martin, principal of the Jesuits in Montreal. The Guibord case brought some members over to France, but until then none of the members had any occasion to invest in French irreligion, unless it were through the teachings of Messrs. Charbonnel and Martin, some time about 1845 or 1846.

[Mr. Doutre goes on to recount the history of the attack by the Church on the Institut, and shows that the Bishop of Montreal never signalized any book in its library as objectionable, although a catalogue was put in his hands.]

Four or five years ago the *Nouveau Monde*, the organ of the

Bishop, said the same thing as Archbishop Lynch, that the library of the Institut Canadien was filled with books fetid with the most rampant infidelity, such as was destroying faith and morality in France—or something to that effect. The Bishop of Montreal had never gone to that excess; his assertions were diplomatically enveloped, and he could not be called to account. It was different with the *Nouveau Monde*. An action for libel was brought against it by the Institut Canadien, and after a protracted investigation the *Nouveau Monde* was condemned as a defamer. The case, if I mistake not, is reported in the "Lower Canada Jurist," and may be perused. I hope that Archbishop Lynch ignored these facts when he repeated the calumny of the *Nouveau Monde* which could have appealed from that judgment, but tamely submitted by paying principal and costs.

The Catholic members of the Institut Canadien never claimed the right to read a disapproved book. They claimed the right of being members of a literary society which might have condemned books in its library. If they are wrong no Catholic could become a member of Parliament, because the library of Parliament contained books condemned at Rome. The facts, as I state them, have been established under oath, both in the Guibord case and in that of the Institut Canadien and the *Nouveau Monde*. There has not been an attempt made at contradicting them. I do not care how many bishops or archbishops would give their words to the contrary,—we have judicial records on our side.

CEMETERIES.

All shades of worship possess cemeteries for the burial of their deceased members, with very slight differences as regards consecration, which it is not necessary to mention here. Let us speak of the cemetery of Cote des Neiges, where it was ordered to bury Guibord. When the suit began, and long after, that cemetery was unconsecrated. This fact deprived the Fabrique, defendant in the case, of the benefit of all the flourish we now read in the Archbishop's letters about the desecration of holy grounds. It was, I think, after the appeal to England that, in order to create to themselves a new weapon, the defendants caused the cemetery to be consecrated. They imagined, in their

strategical combinations, that after fighting us from one court to another they kept in reserve an unsuspected torpedo to upset us after the victory, and they consecrated the cemetery at the eleventh hour. The Courts, both here and in England, failed to see the distinction, whether the cemetery was consecrated or not. The Privy Council took it as a fact that Catholics dying with their rights unimpaired were buried in a certain part of the cemetery, and they ordered Guibord to be buried there. It was ordered that he be buried where the Catholics were buried, with ecclesiastical ceremonies. After the death of his wife, the Institut Canadien, as representing her estate, bought a lot for the purpose of burying her and her family. This implied her husband, and in that lot he will be buried. Having taken from the Archbishop's feet the solid platform of the excommunicated Guibord, I wish him to stand on something in his next letter.

CHURCH AND STATE.

"It appears to me," says His Lordship, "that the State, &c., is manifestly interfering in matters not of its competency and consequently need not be obeyed, for conscience sake, but (thanks!) this interference is rather to be tolerated to avoid a greater evil." That means, rather obey than be hanged. Many people more commonly known in police courts than in palaces, use the same reasoning. In his first letter His Grace, politely bowing to Orangemen, asks them if they would acquiesce in an unjust decree of a Catholic Sovereign, in a like case, where they would be the aggrieved? After the Revocation of the Edict of Nantes, the Huguenots said, rather go away than be flogged or decapitated, and they made the fortune of England, of the United States and shortly after, of Switzerland, of Flanders, and Germany. These were, like the Plymouth Pilgrims, the flower of their native country.

The difference between their case and that of the champions of the Church at the Guibord funeral on the 2nd Sept., 1875, may be found in the utterances of the drunken rowdies who blocked up the gates of the Montreal Cemetery. There are times when unholy words have to be repeated. The Montreal drunkards shouted: "No bloody * * * * * will pass this gate! G— d— Guibord!" &c., &c. None of them

could stand erect on their legs. These were the modern champions of *religious convictions*. They would rather be hanged than obey, not knowing at the time the difference between a rope and a glass of whiskey. Let us go up the ladder and come back to the venerable Archbishop. He evidently wants to convey the idea that Protestant judges know nothing of Roman Catholic ecclesiastical law, and have no moral authority in the matter, and must have been guided by religious prejudices and enmity. That argument was propounded by one of our Superior Court judges, who expressed the wise opinion that if the judges of Lower Canada were called upon to grant damages for the refusal to bury Guibord, they would be obliged to enquire fully into the canonical causes of the refusal, and grant such damages if the refusal were not justifiable, but they had no competence and no adequate knowledge of ecclesiastical law to order the burial! This opinion did not carry conviction in all minds. Simple people asked themselves if the Catholic Church were constituted under the Egyptian and Chinese systems of old times, when priests kept to themselves the whole knowledge and laws of their country, and so closely that none but themselves could understand anything in it. Even Catholic judges were not supposed to know anything of the ecclesiastical law. What could be said, then, of Protestant English lords of the Privy Council? They could competently decide cases coming from India, governed by Indian legislation, cases coming from Gibraltar, under Spanish legislation, cases from former dependencies of France, Holland, Italy, Denmark, &c., governed by the legislation of these respective countries; but Catholic ecclesiastical laws were beyond their attainments. Roman Catholicity claims to be *semper eadem*, and no one but priests or bishops are competent to understand its laws. If *we* had said so, we would be branded as the most impudent defamers. Where and how could human wisdom constitute a more impartial and enlightened tribunal or jury than the Privy Council? The ecclesiastical law of England is almost the same as it was before the Reformation. Ecclesiastical Courts are in constant operation; and lawyers are trained as actively as they were at Rome; until the unification of Italy, in Courts *ad hoc*. The contest was not between Protestants and Catholics, but between Catholics alone. Whether one way

or the other, the decision could have no manner of influence on Protestant matters. If it be contended that the Lords might be tempted into an assumption of power over Catholic questions, it must be remembered that they were exactly the proper tribunal to dispose of such a question. The Fabrique invoked the treaty of a cession from the Government of France to that of England. The Privy Council is the Queen herself, acting with her advisors. One of the parties to that Treaty was in effect called upon to interpret it. Was it possible to come nearer to the source from which the law emanated?

I feel it to be tiresome to explain that we owe light to the sun, and I must close. That light is shining brightly everywhere, except in the Guibord case. Since its opening, half a dozen members of the Institut Canadien have been buried with ecclesiastical honors; one of them, a Freemason besides, was buried after three days of hesitations and discussions about these two qualities under the chancel of the Church of Pointe Claire, near Montreal. Another who died at St. Paul, Minnesota, another in Chicago, and three or four others in Montreal, were all buried here with the honors of the Church under the direction of our good and converted Bishop. These facts are as notorious as the Guibord case itself. A little effort at humility and submission to the law would have settled the Guibord burial in the same manner, and I do not despair to witness that result, though not under the auspices of good grace. The Guibord case will have this beneficial influence on the future of this country—it will teach those who invoke treaties and law, that these facts act both ways; that rights have their correlative duties; that no one has the privilege of using rights and repudiating duties; that there is only one Sovereign over these lands, the civil and political Government; that any attempt to defy that authority may have the support of a few, but will be frowned down by all men of any worth or standing, without distinction of creed or nationality.

Yours, &c.,

JOSEPH DOUTRE.

Montreal, Sept. 13th, 1875.

XI.

INTERVIEW BETWEEN MAYOR HINGSTON AND MR. DOUTRE.

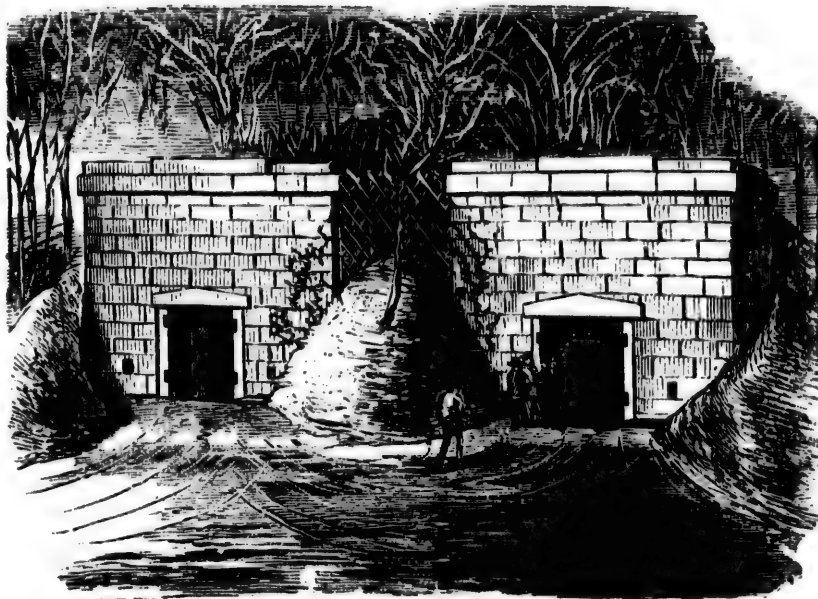
On October 28th, an interview took place in the office of His Worship Mayor Hingston, anent the Guibord burial, which caused some excitement and was the ground of much comment. The matter was brought about by Mr. Doutre, the counsel for the Institut Canadien, and there were present Mayor Hingston, Chief Penton, Col. Fletcher, A.A.G. of the District of Montreal, Mr. Doutre, Q.C., Ald. Stephens, Mr. Glackmeyer, City Clerk, and Mr. Roy, City Attorney. The usual formalities gone through, Mayor Hingston, Mr. Doutre and Col. Fletcher took seats at the table.

MR. DOUTRE stated that he had made bold to address a letter to the Mayor and also to Col. Fletcher, in order that prompt and proper measures should be taken to secure protection to the funeral procession of the Guibord remains, which were to be buried at as early a day as practicable. He had unofficially notified the Governor-General of the course he intended to pursue in the matter, and of the occurrence that had taken place at the last attempt to bury Guibord. He then proceeded to read the law which governed the action of the authorities in cases when riot was likely to occur, quoting from chap. 46, 36 Vict. Having shown the duty of the militia in the matter, and that they could be called out on the signature of a requisition by three magistrates, Mr. Doutre reverted to the facts after the last attempt to bury Guibord, saying that three or four days prior to the attempt he had prepared an affidavit and submitted it to several magistrates for their signatures. These gentlemen, however, had treated the matter as a joke, and said they were not going to make fools of

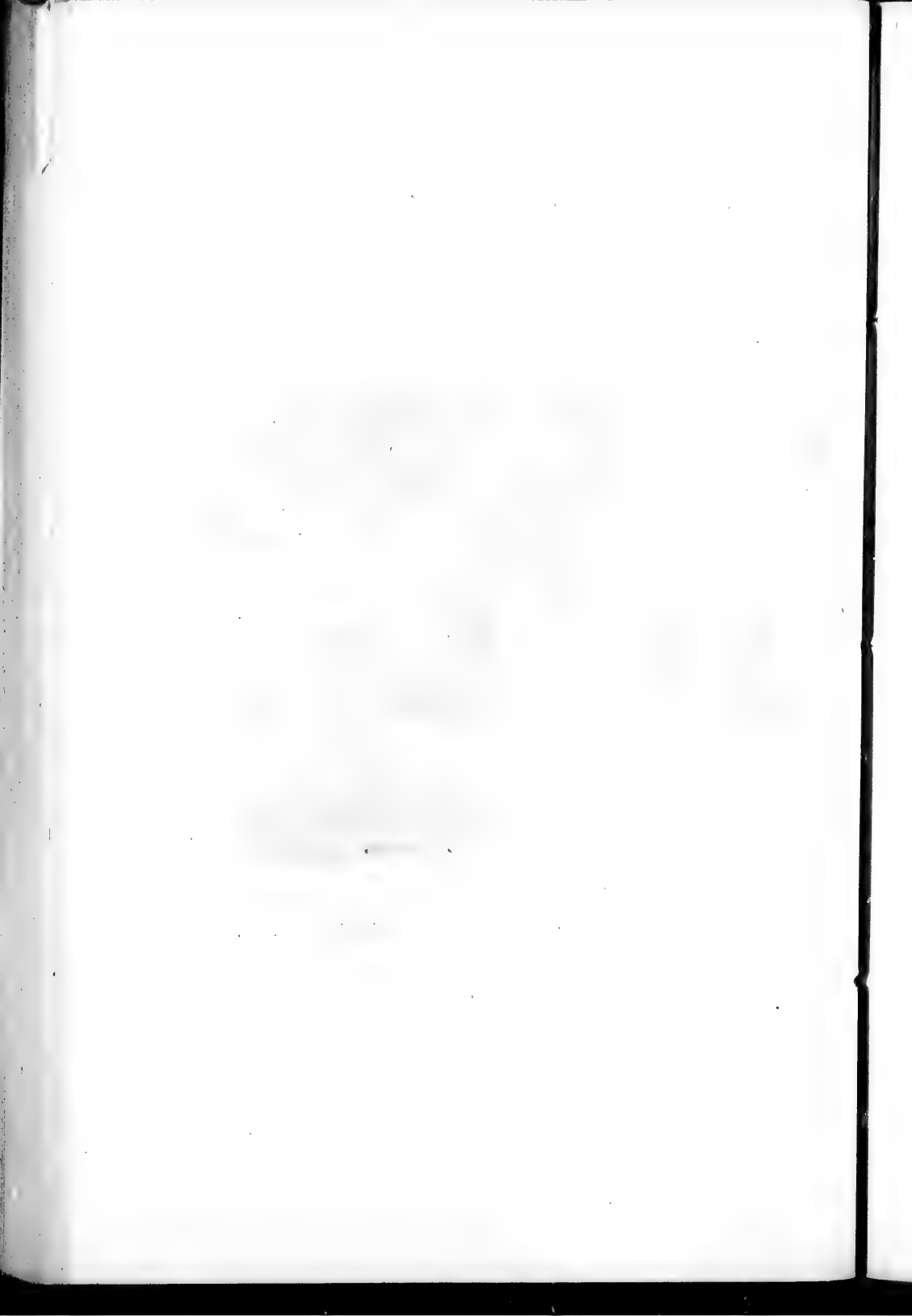
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THE VAULT AT THE PROTESTANT CEMETERY.—(See page 63.)



themselves by taking such extreme measures, as they were not warranted by circumstances. Meeting so many rebuffs he thought best to go no further in the matter, but to attempt to carry on the burial. The result was too well known to require recapitulation. He had tried and failed, and the blame rested upon those magistrates to whom his application had been made. As to the present matter he was certain there would be trouble, for not later than Sunday last—so he had been told—an immense crowd had collected on account of a military funeral, suspecting that the affair had something to do with the Guibord matter. When a crowd had collected a riot might be started by a drunkard or an idiot, but once started it would be carried on by others; good citizens would take part in it; in fact he had seen good, well-disposed citizens so inflamed by passion as to lose all control of themselves. It was scarcely necessary to place a sworn statement in the hands of the Mayor under these circumstances; but as he, Mr. Doutre, had to leave in a few days for the purpose of attending a meeting of the Fisheries Council, he wished to have the authorities take proper precautions in the premises, and to this end he had prepared the necessary documents; he had prepared a statement which he read to the effect that he apprehended a riot on the —th of November next in the city of Montreal.

MAYOR HINGSTON—In the city of Montreal you say?

MR. DOUTRE—Yes, in the city of Montreal; if any riot occurs—of which I have no doubt—it will take place at or around the hearse.

MAYOR HINGSTON—But the cemeteries are outside of the city limits, not in Montreal at all.

MR. DOUTRE—It is true that the fence of the Roman Catholic cemetery was the limit of the city of Montreal.

MAYOR HINGSTON—Then I think your proper course would be to see the Mayor of the Municipality through which the funeral shall have to pass. I do not think your way lies through the city of Montreal, and cannot see why we should furnish protection to outside municipalities; we have enough to do to protect the peace of the city.

MR. DOUTRE—We are bound to take the same route as we took last time. We intend going through Montreal from the Protestant Cemetery and around by Cote des Neiges road.

MAYOR HINGSTON—I certainly think that you will not be doing right in carrying out this purpose. It looks like courting collision and trouble with the citizens.

COL. FLETCHER—The only thing not clear to me is the fact that the law states that the magistrate who signs the requisition shall reside within the municipality in which the riot is apprehended.

CITY ATTY. ROY—Oh, very well, that is all I wished to know.

MAYOR HINGSTON—I wish to say that it is my opinion that it would be better for you to take the same route as you did the last time in this matter, and apply for protection to the Mayor of the municipality at the back of the mountain, through which you have to pass. However, should any difficulty occur in the City of Montreal, I shall do all that lies in my power, aided by the police of the city and the militia of the district, if necessary, to protect the life and property of its citizens. With regard to my previous action in the last attempt to bury Guibord, I would say that I exceeded my powers in the matter in going to the cemetery at all, but having heard that a riot and bloodshed and murder were going on, I felt that it was not the time to strain at a gnat of form, hence my action. When I came home I put myself in communication with the City Attorneys as to my jurisdiction in such cases, and fortified by their decision, I am prepared to do my duty to the utmost as Mayor. Here is the decision of the City Attorneys. (The Mayor proceeded to read the decision limiting his powers to the city.)

MR. DOUTRE—It is not necessary that you should sign the document. The law allows you to be one, and thinking that you might wish to so act, I called upon you as a matter of courtesy, hoping that some arrangement might be perfected whereby the public peace might be secured. If you do not wish to sign it, I suppose some one else will; in any event, I will obtain protection.

MAYOR HINGSTON—Coming into Montreal would provoke a hostile feeling that might be avoided by taking the old route.

MR. DOUTRE—With the experience of the past before us we have decided to come into Montreal for two reasons: in the first place it was not citizens of Montreal who took part in the disturbance of the 2nd September, but persons from the back country.

MAYOR HINGSTON—That is the very reason why you should take the old route. Why bring the trouble—if trouble there be—into the city at all?

MR. DOUTRE—We think otherwise. The authorities of the municipalities through which we have to pass only employ a policeman or two who would certainly be no protection at all, whereas by coming through Montreal we would be subjected to no annoyance until we reached the Cemetery at Cote des Neiges, when the militia would aid the police—who had authority if they wished to go outside the municipality, but of course could not be forced. If there were measures taken in which they joined there was no doubt that the public peace was secured and all would be well. Besides, the distance to the cemetery by going through Montreal and up Cote des Neiges was shorter than the route previously taken round the back of the mountain. Of course if they were to split hairs about a piece of road being inside of the city limits, the matter would not be so easy of settlement. I have been blamed by some because I did not press matters before, and proceed to bury the corpse of Guibord. However, I so acted as I thought was for the best; for it seemed to me blood would have been shed had I proceeded further in the matter at that time. There was a very large crowd of determined people, to oppose whom, unsupported by law, would have been madness.

MAYOR HINGSTON—Pardon me, Mr. Doutre, there is no hair-splitting at all; but I do not see why Montreal should be placed in the position of a protector to any of those outside municipalities, when we had enough to do to protect ourselves with the small available police force. It was not justice to our own citizens who paid taxes for the support of the police force that the latter should be at the beck and call of outside municipalities, and if we commenced interfering in this matter there was no knowing how far we might be required to go in the future. As far as the city of Montreal is concerned, I will answer for it, and the police force, I have every confidence, will second me in it; and here let me remark that I do not agree with you when you state that the crowd that interfered on the 2nd of September were composed nearly altogether of a rowdy element from the back country. It was a calm, determined crowd, not noisy nor violent, but determined to resist to the utmost, to all appearances, and

apparently an organized mob of several thousand people, who could have gobbled up our own entire police force with ease. I, for one, think Mr. Doutre did wisely in not pushing matters at the time; for there is no knowing to what extent the trouble might have gone had you acted otherwise.

MR. DOUTRE—Well, Mr. Mayor, I now ask you if you will as Mayor of Montreal sign this requisition?

MAYOR HINGSTON—I am not prepared to do anything of the kind, unless I am assured that the peace of Montreal is endangered, and I have no positive assurance of that kind.

MR. DOUTRE—My affidavit. If you do not sign as mayor, you can do so as a magistrate.

MAYOR HINGSTON—Excuse me, Mr. Doutre, you have asked me as Mayor, and my first duty is to the city and citizens of Montreal. Fortified with a knowledge of how far I can legally go as mayor, I am prepared to act as such at once, and tell you that when the time comes I shall do my duty to the utmost. I will not, however, now assume at a moment's notice the position of a magistrate in addition, and do that which may weaken my power as mayor, especially when I am not sufficiently clear as to my powers in the former capacity. When you come to me as a magistrate I will answer you as a magistrate.

MR. DOUTRE—Then I ask you as a magistrate:—Justice of the Peace Hingston, will you sign the requisition?

MAYOR HINGSTON—I refuse to act in the capacity of mayor and magistrate at the same time, and at a moment's notice; and I do not think that you have acted fairly in requesting me to meet you as Mayor of Montreal and then putting your question to me as a Justice of the Peace.

MR. DOUTRE—Then I take your answer to be a refusal in both cases?

MAYOR HINGSTON—No; I do not entertain the question for a moment as Justice of the Peace. The interview began with the Mayor; your invitation to me to meet you was as Mayor and will end with the Mayor. There are, as you say, nearly two hundred magistrates in the city, and why should you single me out in the matter? After this interview at any time you should name or when you may call upon me, I shall answer you as a magistrate and a justice of the peace, but now you ask me all in a

moment, and I do not know how far my action as a magistrate at present may interfere with my future action or authority as mayor. I decline to entertain the question as magistrate for a moment. Besides you have not even mentioned the day upon which you expect the funeral or riot or other trouble to take place.

MR. DOUTRE—Oh, well, I have left a blank that can be filled up. I do so now and say the 4th November. This, however, may be altered. I do not say that it will positively take place upon that day.

MAYOR HINGSTON—Well, as Mayor of Montreal, you have my answer that I shall take all proper measures to ensure the protection of the public peace within the limits of my jurisdiction. As magistrate I do not enter into the question.

MR. DOUTRE—Then I presume the interview is at an end.

The MAYOR—I suppose so, unless you have anything more to say to me in my capacity as Mayor.

MR. DOUTRE—I have not.

The interview then came to a close.

XII.

WHAT THEY THINK IN ENGLAND.

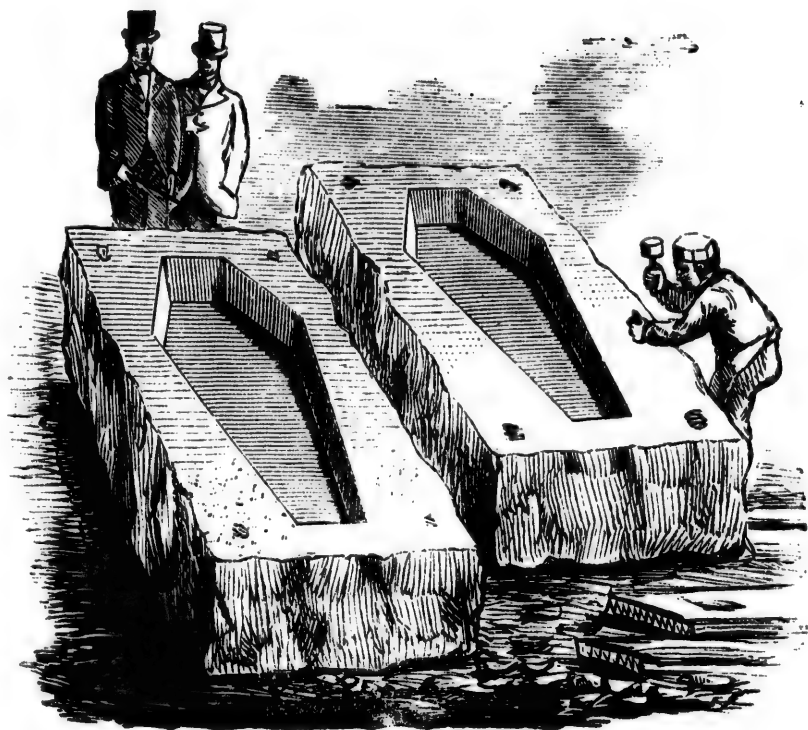
(From the Times, Sept. 21.)

The city of Montreal has been cast into a state of something like civil war by the question whether a man who died five years ago shall be buried in consecrated ground. The story, which our Canadian correspondent told yesterday, and which our Philadelphia correspondent recounts to-day, is scarcely freed from an element of comedy, even by the solemnity of the grave ; but in truth it is seriously important to this country, as well as to Canada. Lower Canada, the scene of the quarrel, is noted for the tenacity with which it has clung to the Catholicism of its early settlers. The Jesuit missionaries who were among the first leaders of the French Colonists left imperishable memories of their energy, and some of the worse elements of their zeal seems still to live in the Canadian priests. Nor have the descendants of the early settlers fallen away from Catholicism like the French of the present day. The cynical criticisms of Voltaire never reached Lower Canada, and the faith of the colonists is pretty much what it was when Louis XIV. dipped deep into his privy purse to pay for the missions by which he helped to soothe the memory of his sins. As the religious fervor of the people has been quickened by the influx of Irish, the Pope has good reason to be pleased with the devotion of Lower Canada. (The facts of the case are here recounted).

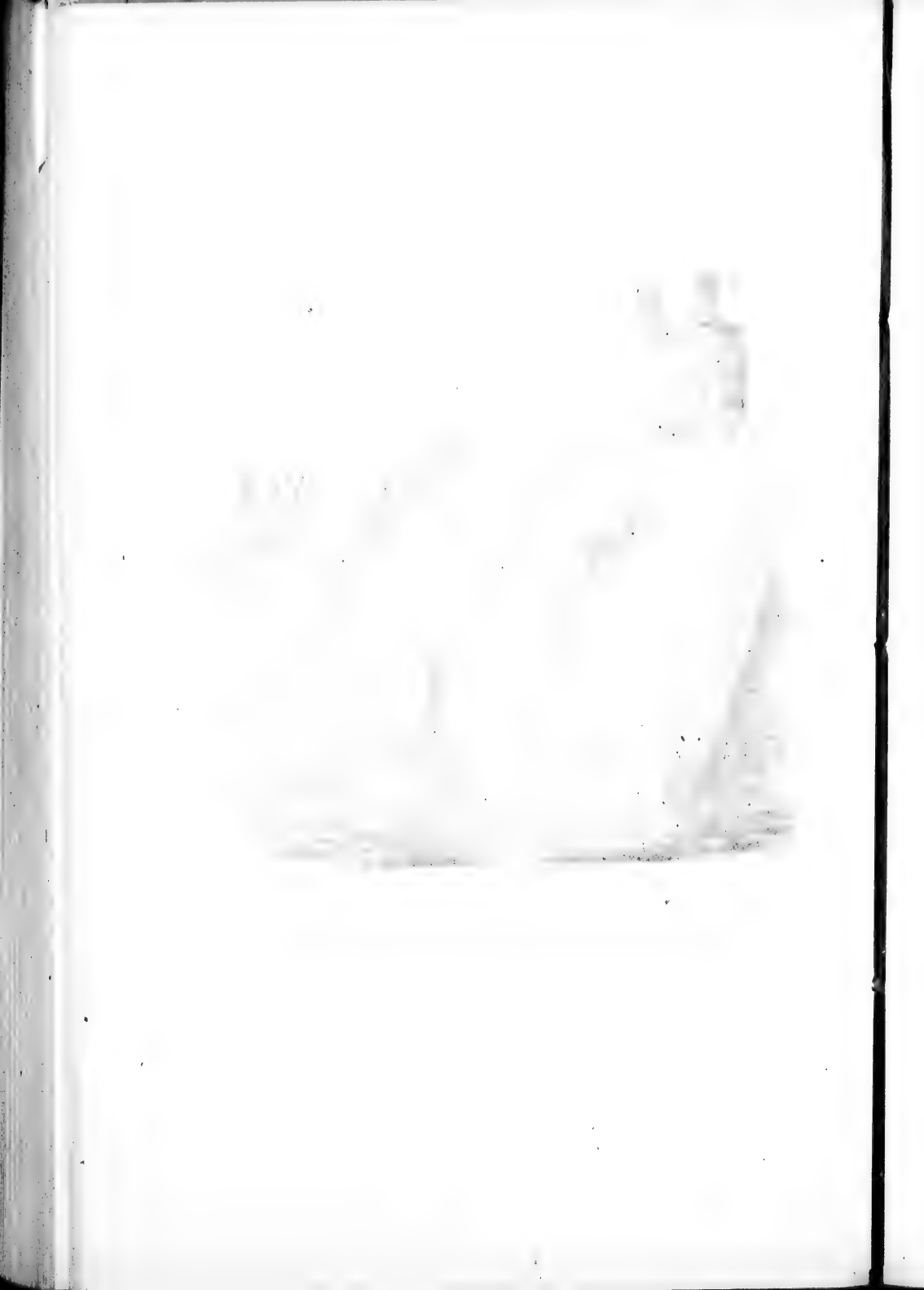
It would be difficult to find a more instructive example of the inevitable collision between the civil authority and the Roman Catholic Church wherever that Church feels itself powerful. What has happened in Canada might easily occur in Ireland, or even in England. The authorities of the Catholic Church claim supreme jurisdiction over their flocks in all matters spiritual, and the merely abstract demand may be readily granted. In the eye of the law their Church is merely a corporation, with no greater

and no less rights than any other. It is in precisely the same position as the London and North-Western Railway or the Carlton Club, and it is allowed to exercise powers of discipline, not because it has a sacred character, but simply because its members have the same civil rights as other citizens. If they agree to obey a particular man and to be bound by a particular set of rules, they may be held to their bargain so long as it contains nothing essentially illegal. Within these wide limits the authorities of the Catholic Church are certainly the supreme spiritual judges of their flock, and they may deny any member of their Communion the sacraments on precisely the same ground as a committee of a club may expel any member who has broken its rules. Nay, the Bishop of Montreal would have had a right to prevent the body of Guibord from being buried in consecrated ground if the man had really forfeited his spiritual privileges. But here comes the collision between the law and the Church. Did he forfeit those privileges? The Catholic priests reply that they alone are entitled to answer a question which is purely spiritual. But, in reality, it is civil as well, because the denial of Christian burial has inflicted a stigma on his memory and the reputation of his family. When his representatives claim redress the Courts must treat the matter simply as a dispute between certain members of a Corporation, and decide it as if it were an action brought by some shareholders of a railway company against the directors. All a Court of law asks is whether a particular contract has been kept, and if the bargain has been broken it is bound to give relief. But, as it must retain the power of determining whether a contract has been fulfilled, it really becomes in the last resort the supreme judge of spiritual as well as temporal affairs. Roman Catholics, Methodists, Baptists, may all be free from any formal connection with the State, and they enjoy a large amount of liberty; but they can no more escape from the dominion of the law than the Church of England herself. All the declamation of the Montreal priests against Guibord's right to his grave being negated by their spiritual jurisdiction comes from a confusion of ideas. They have merely such spiritual authority as they draw from explicit or implied contract with their flocks, and the Courts of Law must determine whether they have broken the bargain. Now, the

Judicial Committee of the Privy Council has decided that, according to the law of the Canadian Church, Guibord did not forfeit his right to Christian burial merely because the Bishop included him in a wholesale excommunication. Sir Robert Phillimore and the other judges of the cause did not pretend to decide whether the law is good or bad. That is a matter which the Vatican and the Canadians must settle for themselves. If the Pope and the Bishop do not like the law, they can endeavor to obtain a change in it; but, so long as it exists, they are as much bound to obey it as if they were the most secular of traders. Any attempt to resist the decree of the Judicial Committee must, therefore, be punished just as severely as the most vulgar breaches of the public peace.



THE STONE SARCOPHAGUS.—(See page 104.)



XIII.

THE FINAL BURIAL.

The excitement in the city and throughout Canada, England and the United States, grew intense on the eve of the burial which had been, after many postponements definitely settled for Tuesday, November 16th, 1875. Special correspondents from English and American papers were in the city, and communicated many interesting items of news to their respective journals, which—from the exigencies of the case, the Montreal papers were not allowed to publish. Many of these statements were tinged with exaggeration, tending more to the discredit of the city than the facts, which were bad enough, would justify. The volunteers, who had been undergoing their annual drill, would often march through the streets at the conclusion of their night's drill, singing extemporaneous songs with such sentiments as the following: 'We'll bury old Guibord in the consecrated ground,' "Guibord's, coffin weighs exactly forty ton," &c., &c.

Pretty nearly every day of the week preceding the funeral, exaggerated reports of the strength of the military were spread in all directions; while the general idea that His Worship the Mayor would not use his influence to complete the burial were rampant, and between the mystery of the operations, the importance of the principle at stake, and the constant postponement of the day, the excitement was kept at fever height. Even the members of the press were not informed of the hour of the burial.

Owing to threats that Guibord's remains would be exhumed if buried in the consecrated ground, preparations had been made for ensuring that his resting place would prove a permanent one. At first the report was spread that above the grave a torpedo was to be placed, which, although it would allow anyone to walk over the grave with safety, would explode immediately on being

touched by any shovel or other instrument two feet below the surface. This joke which was played upon the world met with considerable success and lived for some time, and even now it is understood by some that one of these infernal machines are buried above the remains. Next Mr. Reid, of St. Catherine street, was given the order to make a stone coffin or sarcophagus, weighing about eight tons. This was to be in two parts, as shown in the illustration, one half acting as a foundation for the wooden coffin and the other half covering it. They were to be firmly riveted together, and it was supposed would resist all attempts at disinterment. But early in the week preceding the burial, the Mayor, who had overcome his legal scruples to seeing the decrees of the Privy Council carried out, objected to the sarcophagus on the ground that it would cause a disturbance in being carried to the Cemetery. The Institut insisted on having it used, till the day preceding the burial, when at a meeting they decided to abandon the sarcophagus but cover the coffin with Portland cement mixed with scrap iron, which on hardening would form a substance as hard as stone and more difficult to drill.

On Saturday evening, a meeting of those most interested in preserving the peace of the city at the burial was held, and His Honor Judge Coursol was requested to act as attending magistrate—in default of His Worship the Mayor—at the funeral, which request was acceded to. Lieut.-Col. Fletcher, Deputy Adjutant-General for the district, also issued the necessary instructions to battalion officers to have their forces muster on Tuesday morning, consequent on a requisition having been presented to the effect that serious fears of a disturbance were entertained if there was no adequate protection afforded the funeral procession.

The Sunday previous, the Roman Catholic priests in the city and district had at the Mayor's request, commanded their people not to go near the funeral, nor even look at it. On Monday morning Mr. Doutre fyled the writ of *mandamus* ordering the burial, and served a copy of it on the Seminary of St. Sulpice. The writ was made returnable on the 27th. He also demanded from Rev. V. Rousselot, the Curé of Notre Dame, that he should perform the ecclesiastical rites over the remains the next morning, to which demand the following reply was made :

MONTREAL, 16th Nov., 1875.

To Messrs. Doutre, Doutre & Hutchinson, Advocates of the Institut Canadien :

I received on the evening of yesterday, the 15th inst., the writ of *mandamus* and the notice you signified to me the same day—a writ of *mandamus* which reminded me of the judgment of the Privy Council in the Guibord affair, and a notice by which you inform me that to-day, at 11 a.m., the remains of the deceased will be presented at the Cemetery of Cote des Neiges; and you require me to give, or cause to be given, to these remains the usual ecclesiastical ceremonies under pain of expenses, damages and interest. It is my duty to answer you; I do it with full liberty; you must not take it ill.

The concession and refusal of ecclesiastical sepulture—that is to say, sepulture made in consecrated ground, with the prayers, the ceremonies of the Church, the stole and the surplice—are essentially within the jurisdiction of the ecclesiastical authority, and not in the jurisdiction of the civil authority. Already at first, when one came in your name, on the death of J. Guibord, to demand from me ecclesiastical sepulture for him, I replied that the Episcopal authority had ordered me to refuse it, and I produced the letter which confirmed that. But I immediately added that I could offer him civil interment, and I offered it. On this occasion I spoke as Curé in the name of my Bishop, and not in the name of the Fabrique of Notre Dame. The Fabrique had nothing to do with this question, as, in fact, no one had demanded anything of it, and it had refused nothing. It is not for Messieurs the Margailliers to decide whether such and such an individual merits or does not merit ecclesiastical sepulture, and, consequently, whether he should be buried in such and such a part of the cemetery, whether consecrated ground or not. You know all this well. Consequently you ought not to prosecute before the civil courts the Fabrique of Notre Dame, since it was not guilty of any delinquency; and you have committed a serious injustice in denouncing it to the Privy Council for refusal of sepulture, and in causing it to be condemned either to bury J. Guibord or to allow him to be buried in the midst of Catholics

who have received the honors of ecclesiastical sepulture, and finally to pay the expenses of this process.

The judgment of the Privy Council not having condemned Mgr. the Bishop, the only competent authority in this order of things, and having ordered the Fabrique to perform acts which it has not the capacity to perform, to bury J. Guibord, or allow him to be buried, you cannot in any way avail yourselves of that judgment; and the ecclesiastical authority persisting in refusing his sepulture in the part of the cemetery where you desire to bury him, you can proceed legally with its execution. However, the Fabrique, condemned in consequence of the false allegations of Monsieur J. Doutre to the Privy Council, resigned itself, through respect for Her Majesty the Queen of England, our gracious sovereign, to pay the expenses of the process; and on its side the ecclesiastical authority, to prevent greater evils, resigned itself to take an attitude purely passive. Fearing riots and conflicts, which might have regrettable consequences, it made words of peace heard from the pulpits, and exhorted all the faithful not to attend this funeral. Meantime I declare to you,

1. That I cannot grant ecclesiastical sepulture to J. Guibord, Mgr. of Montreal persisting in his refusal.

2. That you cannot yourselves effect or order the civil interment of J. Guibord in the part of the cemetery consecrated by the prayers of the Church, but I of now offer it you in the other part.

3. That if, despite all this, you persist in your deplorable design, I am obliged to resolutely protest against the violation of the Cemetery, of the laws of the Church, and of the liberties of Catholics in Lower Canada.

I have the honor to be, &c.,

(Signed)

V. ROUSSELOT, Ptre., S.S.,

Curé de Notre Dame.

P. S.—It is unnecessary to add that I shall be present at 11 o'clock at this burial, but only as a civil officer.

(Signed)

V. R.

On the same evening Mr. Boisseau went to the office of the Fabrique and tendered the fees, \$4.35, due before burial. Mr.

Choquette, however, refused the money, remarking that he had not been authorized to receive it.

The muster of volunteers that evening to receive instructions and ammunition for the morrow was larger than for many years before. The battalions which mustered were as follows :—Montreal Garrison Artillery, about 200 strong, Lieut.-Colonel McKay commanding ; Colonel Stevenson's Field Battery, about 60 strong ; the Hussars under Lieutenant McArthur, numbering about 25 ; the Victoria Rifles, about 280 strong ; Prince of Wales Rifles, 250 strong ; the 6th Battalion or Hochelagas, 250 strong, and one company of the Montreal Engineers. The city police to the number of 100 men were also ordered to be in readiness. On Tuesday,

THE MORNING OF THE BURIAL,

at half-past 8 o'clock, Chief of Police Penton met the Mayor at the residence of the latter, and received instructions to march his whole reserve force of about 100 men to the Protestant Cemetery. The force left the Central Police Station at about a quarter to nine o'clock, headed by the Chief himself and accompanied by the detectives ; forty of the men were armed with breech-loading Snider-Enfield Rifles, the remainder merely being armed with batons. They proceeded in a column of fours along St. James street to Bleury street and along that to the Protestant Cemetery.

GATHERING OF VOLUNTEERS.

The Volunteers above mentioned, to the number of about 1,100 in all, mustered on the Champ de Mars and presented a very handsome sight in their neat and clean uniforms.

The Mayor appeared on the Champ de Mars for a few moments about half an hour before the troops set out. Colonel Lovelace accompanied Colonel Fletcher. The troops proceeded along Craig street to St. Lawrence Main street, marching at the shoulder for some little distance, after which they were allowed to march at ease. Taking advantage of this, the 6th Hochelagas struck up several songs, such as the "Mulligan Guards," "Marching Along," &c. On both sides of St. Lawrence Main street as far as Sherbrooke, the windows were thronged with people, while numbers accompanied the force. St. Jean Baptiste

village was characterized by the absence of on-lookers, very few of the villagers appearing on the scenes. The column turned towards the cemetery at Mount Royal Avenue.

AT THE CATHOLIC CEMETERY.

About half-past eight Mr. Reid and Mr. Boisseau, Superintendent of the Institut, accompanied by a couple of the former's men, came up to the Protestant Cemetery with their tools and a quantity of Portland cement, and at about nine o'clock entered the Catholic Cemetery from the back and commenced operations at the grave. The ground was found to be frozen about six inches down, while there was a thin layer of snow above. However, by half-past nine, the two diggers, who handled their tools vigorously, had got down about two feet, making the excavation directly over Madame Guibord's coffin. The hole to contain the coffin measured eight feet in length and three feet in breadth, and descended about four feet. The coffin of the late Mad. Guibord was reached without difficulty, and an opening made on each side and at the ends, in order to admit of a thick layer of the Portland cement being introduced. At a quarter-past nine a.m., a squad of police, eighteen in number, arrived under Sergeant DeKoninck, and were marshalled round the burial lot, forming a hollow square, from the inside of which all civilians except Messrs. Boisseau, Reid, and reporters were excluded. The scene was quiet, only a few members of the Institut and two or three boys being present beside those officially engaged. Some twenty or thirty young French-Canadian roughs gathered at or near the vault, and as a reporter's carriage drove up at about 9:15, they stood compactly in the way till the driver was about to stop or shout out to them, when they slowly opened, and, peering into it intently, let it pass. When Messrs. Boisseau and Reid first arrived, Mr. Choquette, the secretary of the Fabrique, and Mr. Deroche, the sexton, came over and took official cognizance of the grave-digging, after which they departed. An old Irishman tottering along on his stick was met making his way to the grave. On being asked why he did so, he replied, "Oh! I jist want on' pape, and thin I'll go back; the Bishop won't object to that." At 10 o'clock the grave was finished, and was ready for the coffin.

A lead plate with the following inscription was dug up by the grave-diggers from Madame Guibord's coffin.

HENRIETTE BROWN,
veuve de
JOSEPH GUIBORD,
décédé
le 24 de Mars, 1873,
à l'âge de 65 ans.

The cross, which was standing all right on Sunday, was on Tuesday morning found lying in the snow, torn apart. It bore marks of the knives of relic-hunters, and was well whittled up. At 10.10 a number of members of the Institut, wearing their badges of mourning, came up, and became attentive spectators of the solemn scene.

At 10 o'clock not over twenty spectators were to be seen, but were collecting from both ways. The weather was pleasant for the time of year, and everyone appeared sanguine that the burial would be successfully accomplished.

THE PROTESTANT CEMETERY.

As soon as the Mayor was aware that the military were thoroughly organized, he ordered Chief Penton and his police to march direct for the Protestant Cemetery, which they did. His Worship preceded them, and on arriving at the gates was delayed somewhat by the absence of Mayor Edwards of Outremont, on the joint requisition of whom and the Mayor of Cote des Neiges, he had authorized the turning out of the city police beyond the limits. However, in a few minutes Mayor Edwards arrived, stating he had been delayed in order to consult legal authorities as to the line of action he would be justified in pursuing. The Mayor, who had given the subject careful study, made some explanations, and it was at once decided to proceed with the burial. The police formed in a hollow square around the cemetery vaults, and Mr. Spriggings produced the keys, unlocked the massive iron doors, and as they swung open he and his men entered, followed by friends of the deceased. After a little delay the coffin containing Guibord's remains was produced, when

Mr. Boisseau asked if those were the remains of the late Joseph Guibord, kept by him for six years, delivered up to him

again on the 2nd September, and returned to him for safekeeping on the same day.

Mr. Spriggings said they were the same.

Mr. Boisseau thanked Mr. Spriggings for the care he had taken of the remains, and also the directors of the Cemetery for their kindness in keeping them for so long a time.

Thereupon Chief Penton gave the command, "Shoulder arms;" the police did so, and the funeral procession started, which, at that time, only consisted of a couple of carriages. It proceeded at a slow walk down Mount Royal Avenue into Cote St. Catherine road, and so around the mountain, the police being

THE SOLE GUARDIANS,

as the military were far behind, never going into the cemetery at all. The procession drew all the residents along the road out of their houses, and men and women followed it on to Cote des Neiges. From here in to the Catholic Cemetery the road was crowded with people of all classes in cabs, carts, and on foot, while the stream of vehicles which had been going west to meet it now doubled about, making a sort of lane for a small funeral to pass through. Great quiet prevailed and no one showed by look, word or deed, any feeling of hostility towards the procession.

ALL QUIET.

About quarter to 11 a.m., some one hundred and fifty people gathered together in the Roman Catholic Cemetery, and went to the grave. A few were evidently rough characters, but they were very quiet. At the same time a knot of young men gathered at the Cemetery gates, but they manifested no disorderly disposition.

At 10.45 His Worship the Mayor and Judge Coursol arrived, mounted on two splendid chargers, which they gracefully rode. Without halting at the gates, they at once entered into the Cemetery, and up to the grave. About eleven o'clock, a man somewhat excited walked briskly through the Catholic Cemetery gates, exclaiming, "About 400 Irishmen from Griffintown are coming up." This news was considered a good joke, and afforded considerable amusement to the crowd, which appeared to be afflicted with cold feet through standing still so long. During the inter-

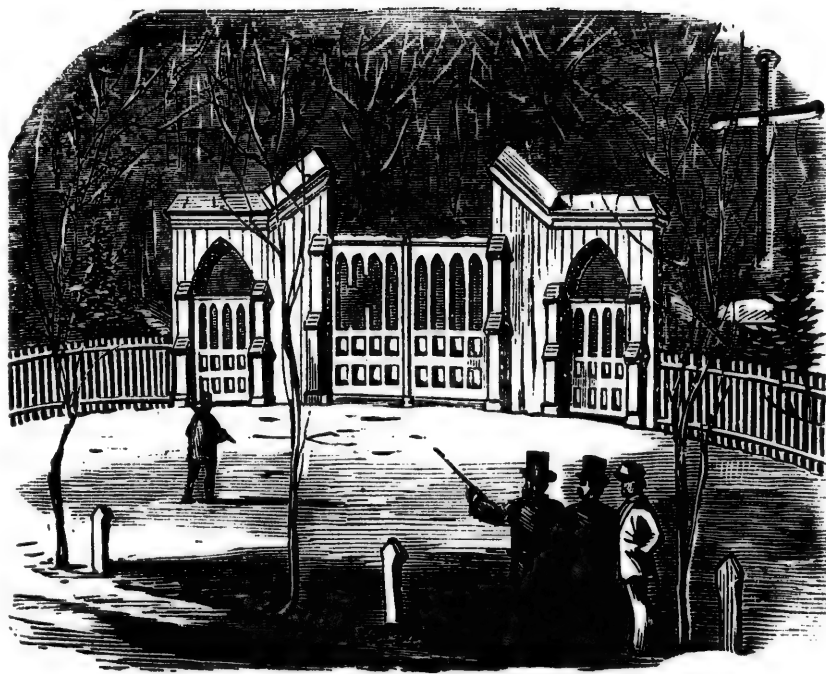
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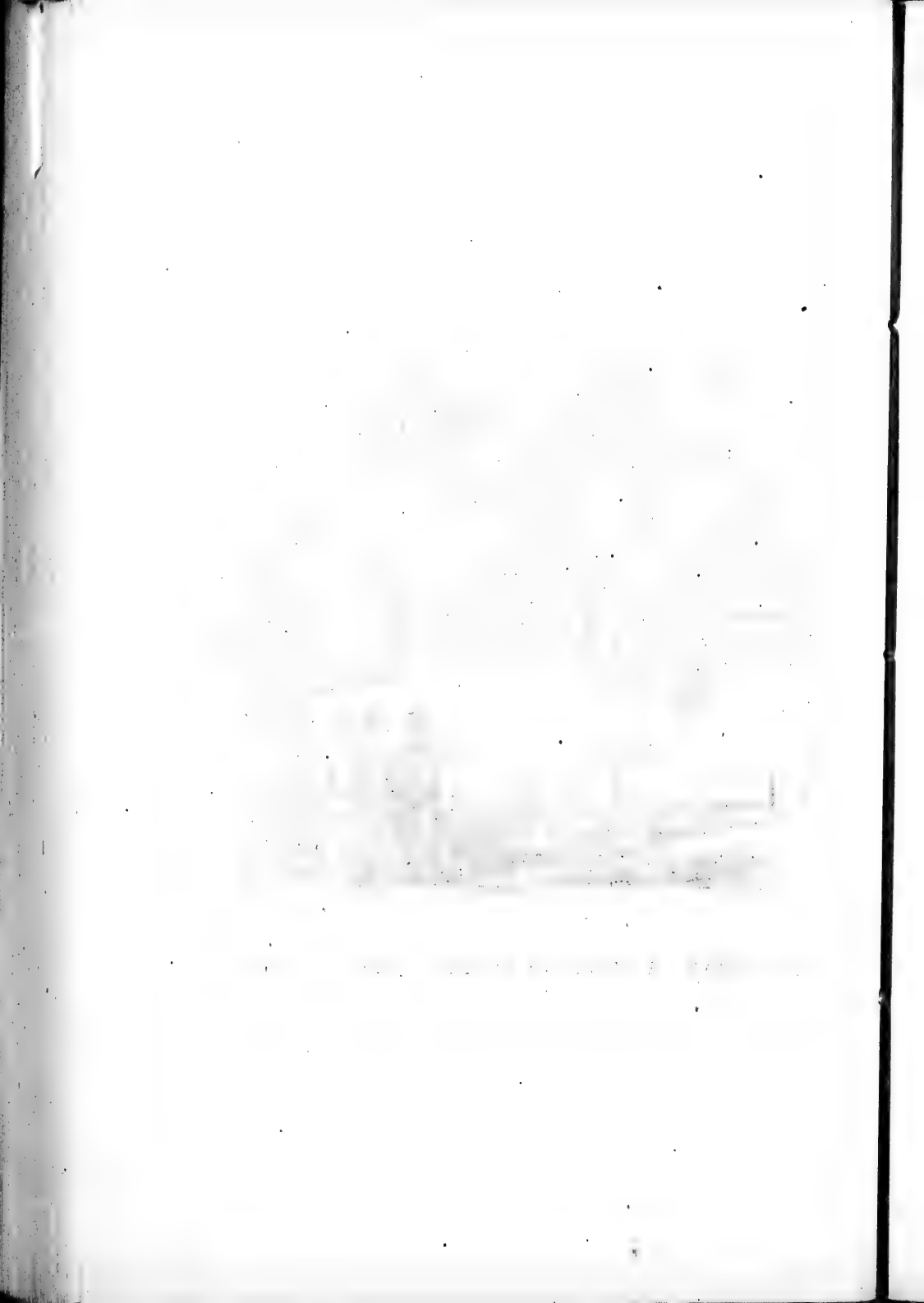
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THE ROMAN CATHOLIC CEMETERY GATES.—(See page 64.)



val between the departure of the procession from the Protestant Cemetery and its arrival at the Catholic Cemetery gates, Mr. Reid was busy preparing the cement to place about the coffin. He had brought up a cart load of the cement and other material, beside a portable wooden trough in which it was mixed. The cart containing it came in through the Catholic Cemetery gates. The Mayor and Judge Coursol, after inspecting the grave and finding everything progressing satisfactorily, returned along the Cote des Neiges road to meet the funeral procession.

CLOSING OF THE GATES.

At 11:30 a crowd of young people closed and barred the gates, but they were evidently only in jest, as when the police arrived, a minute after, they were opened. Deroche, the keeper of the Cemetery, then came down and took off the gates altogether, quite an excited crowd being gathered round as he did so.

About five minutes after the Catholic Cemetery gates had been taken down, the funeral procession entered between the gate-posts, Chief Penton, mounted on his white horse, Col. Labranche, sergeants and detectives at the head and flank of the column of police, a portion of which preceded, and the balance followed, the hearse. Not the least sign of disturbance was expressed as it passed through. The military did not follow closely after the police, and were halted at the village of Cote des Neiges. The crowd began gathering from every direction, and ran with all speed up the various avenues toward the grave. The police, when they arrived, formed a large square around the grave, and kept the eager crowd back, while the coffin was brought out of the hearse, looking somewhat dilapidated, and, borne by four men, was placed in the centre of the bed of cement. As this was being done,

Rev. Curé Rousselot came up, and, going alongside Mr. Boisseau, asked to what depth the grave was dug.

Mr. Boisseau replied that it had been dug four feet in depth, by the authority of the cemetery at the first interment of Madame Guibord.

Curé Rousselot next asked if the body had been properly identified.

Mr. Boisseau replied that it had, and there was no mistake.

The process of filling the grave then began, and the Curé went away.

As the crowd of spectators were standing around the grave gazing on the workmen shovelling cement mixed with scraps of tin and sheet iron, Mr. Homier, a reporter of the *National*, asked Rev. Curé Rousselot, just as he was turning away from the grave side, in what quality was he there? The Rev. Curé replied, very hotly, "I appear here in the quality of a civil officer," saying which he abruptly turned, and 'passed through the crowd, taking off his hat to the salute of the police as he did so, entered his carriage and departed.

PROCEEDINGS OF THE MILITARY.

The Mayor, who represented the civil arm of the law, both for the city and the two municipalities, while Judge Coursol appeared on behalf of the military, was desirous of conducting the funeral with the least possible parade or ostentation, and so when he had, in company with Judge Coursol, ridden on ahead of the procession, and found all quiet in the cemetery and at the grave, rode back, and orders were given to halt the military in Cote des Neiges, while the procession proceeded. As the column proceeded along Mount Royal Avenue to the St. Catherine road, it was noticed that the hands began to dip into the haversacks, while occasionally something stronger than water was brought to view. When near Roy's hotel, a drunken driver of a swill cart, coming in an opposite direction, demanded "half the road," to the amusement of many in the ranks. The force turned to the right at Roy's hotel, and marched into Cote des Neiges. As previously referred to, when the head of the column reached Pendergast's hotel, His Honor Judge Coursol and the Mayor met it, and ordered a halt. It was then made known that a quiet entry had been made into the cemetery, and that the services of the volunteers were fortunately not required. At the rear of the Prince of Wales Rifles was Alderman Stephens, who trudged along on foot.

FILLING UP THE GRAVE.

The moment the coffin was lowered into the grave, the work of mixing the cement with water was commenced in the trough which stood alongside, and the workmen industriously plied their

spades, shovelling in the liquid cement, mingled with odds and ends from a tin-shop, and scraps of sheet-iron, which, when the cement hardens, weld the mass firmly together, and prevent brittleness. The comments of the spectators were various as this work went on. Some thought it an additional desecration of the Cemetery, and hinted that it was one more reason why the "cursed Guibord" would have to come out of that; others regretted exceedingly that the sarcophagus had not been brought up, as, if not used as a casket, it might have been laid on top of the cement; others seemed to take the whole affair as a huge joke, though to many, who, with compressed lips and knitted brows, viewed the scene from afar, it was the very reverse. As the filling in process continued, the police grew a little less strict in holding the crowd back, and a very motley assembly speedily environed the grave, getting in the way of the workmen, and compelling Mr. Reid to order them away. Members of the Institut picked up little pieces of the scrap iron as mementoes of the unnatural way in which they had been compelled to carry out the interment. Others sneeringly alluded to Guibord and his mortar, and one made such pointed allusions to the workmen, that one of them intimated quite plainly he would give him a "crack over the head" if he didn't mind. The fellow minded accordingly. Mr. Camyre, a French-Canadian printer, related to Guibord, stepped forward during the ceremony, and said if there was nobody to say a word for deceased he would like to do so. Guibord had taught him his trade, and he would like to make the sign of the cross for him, which he did and retired. The speaker's remarks were not received with approbation from a number of the roughs, who hooted at Mr. Camyre; beyond this there was nothing publicly said on the side of the Institut Canadien. The *animus* of the crowd collected was so unmistakable, and their threats to dig Guibord's bones out of the grave if an occasion offered were so openly expressed, that Mr. Boisseau determined to secure, if possible, a guard of police from the Mayor, to watch the grave for at least twenty-four hours, thus giving time for the cement to harden into

SOLID ROCK.

The Mayor and Judge Coursol had departed on seeing the

burial quietly commenced, and Mr. Boisseau despatched a special messenger with a note asking the Mayor to provide protection, without which, he feared, the grave would be opened.

The Mayor promptly consented to this, and wrote out an order for a sufficient body of police to be sent out as a guard till such time as not required. The messenger met Chief Penton *en route* from the cemetery, and he stated that as soon as his men had dinner he would send up a guard. It may be mentioned that Mr. Choquette, of the Seminary, also suggested to his Worship the advisability of providing police protection for a time. The cement was filled in over the coffin to near the surface, when the top dressing of earth was piled on, and

GUIBORD WAS BURIED AT LAST.

The drizzling cold November rain beat down on the snowy, muddy ground, and on the spectators who witnessed the closing act in a drama which commenced six years ago. When all was over, Chief Penton rode up in front of the grave on his white charger, the police were formed into two divisions, and marched off in fours. A crowd of about twenty-five or thirty degraded looking loafers then gathered around the grave, and one of them in mockery put a dead thistle stalk at the foot of it, which was snatched up by a bystander, at whom they began to jeer. They attempted nothing further for some time, and looked rather uncomfortable, as the rain, which was then falling, had the effect of damping their ardor. As the last cab, containing Mr. Boisseau, moved off, they summoned up sufficient resolution to emit a good square hiss and a few jeers.

THE MILITARY,

after waiting a short time a little way from the gate of the Catholic Cemetery till the burial was completed, advanced down the road, halting at the Cote des Neiges toll-gate to put the drags on the gun-carriages, when they continued their march down the hill along to Dorchester street; thence to Beaver Hall, and on along St. James street to the Champ de Mars, where they were again halted. After a few minutes, orders to disband were given, and each battalion marched to their armory; the Prince of Wales Rifles and Garrison Artillery headed by their respective bands.

The former passed up along St. James street on their way to the rink, which at present serves as their armory. The latter part of the march, as the first part of it, was enlivened with songs. The only incident was the falling of one of the horses attached to a gun of Col. Stevenson's battery. The mud made the marching very disagreeable for the military, who were covered with it up to their knees, or "eyes," as a private had it. At the time of the halt by the gate of the cemetery rain began to fall, and it continued to do so till the end of the march.

It was first proposed to march the soldiers home by the Monklands road in order to avoid passing Cote des Neiges Cemetery, but Col. Bond and other of the gallant officers protested so strongly against this "back alley" march that the troops were eventually permitted to take the "shortest cut" home.

THOSE PRESENT.

Messrs. Boisseau, Dempsey, and other prominent members of the Institut were present; also Madame Rose, sister of the deceased, H. Judah, Esq., Kenneth Campbell, Esq., and several French-Canadian advocates. Mr. Joseph Doutre was not present, owing to an important case he was engaged in (*McBean vs. Carlyle*), which six weeks previous had been fixed for that day, and in which his adversary was proceeding, having over a dozen witnesses to examine, and of his firm he was the only one who knew anything of it. Also the Mayor requested him not to attend the funeral, stating as a reason that his presence might give rise to trouble, and as he had made every possible concession to avoid trouble he would have complied with that request even if he had not been engaged during the day, as his presence was not necessary at the funeral. Upon Mr. Boisseau devolved the representation of the Institut, and he certainly discharged his duties with great fidelity.

TOOK A HOLIDAY.

It is stated that the students of the French Medical School and others did not attend their lectures, as usual, apparently taking for themselves a holiday, very appropriate no doubt when such an event in Canadian history as the burial of a Guibord was taking place.

After the police and members of the Institute had left the grave of Guibord on Tuesday, several rough characters remained to discuss the new situation which had been imposed upon them. One present says they discussed the probabilities of attempting to open the grave, but decided to let the work alone till dark, and before night set in, Sergeant Burke came on duty with his police.

WHAT MGR. BOURGET'S ORGAN SAYS.

Under the heading, "Marlborough s'en va-t-en-Guerre," Mgr. Bourget's organ—whose last expressed wishes previous to the Guibord burial were to the effect that no one in authority would stir a foot to see it carried out conformably to the Queen's decree—thus expressed itself after the successful issue of the funeral:—

"The clerks employed in offices, officers on a holiday from their office, and cadets at fifty dollars a diploma who form what it has been agreed to style Her Majesty's loyal Volunteers in this country, paraded solemnly in our streets this morning. They are called to represent, with the exception of the wigs, the majesty of a judgment of the Privy Council, legalizing the violation of the rights of the Church in this country. As, however, the thing was for this army of heroes to begin their warlike careers by an exploit in the wrong direction from those by which a soldier ordinarily gives proof of his quality, it seems one has blundered in regard to the kind of arms with which they should be provided. In place of making them trail carbines and cannons, why have they not rather been given pick-axes, shovels and wheel-barrow? Were not these the most fitting arms in the circumstances? One can understand soldiers making it an honor to bury a dead man fallen on the field of battle, but to go under the conduct of the son of a beadle (Mr. Doutre) to bury a simple 'Pekin,' for the pleasure of passing him like contraband into the Catholic Cemetery is an office beneath an undertaker's man. It is said that certain volunteers are very full of enthusiasm at this opportunity of showing themselves in costume. Each has his aspirations, however. The Ontario volunteers, when they went on their pacifying expedition to Manitoba, had for an object, their chronicle³ asserted, to go and hang the *Metis*; but our volunteers are less malignant, they content themselves with burying the dead * * * of natural death."

A WALL TO BE PUT ROUND THE GRAVE.

A visit to the Catholic Cemetery Wednesday morning resulted in finding the grave untouched, the snow which had fallen over it during the night lying without a mark; a piece of fence rail, inclined at an angle of 45 degrees to the horizon, was sticking in the mound over the grave, forming the only monument. A person in the cemetery stated that the Fabrique intend putting a stone wall 16 inches thick about the grave, thus marking it off from the cemetery. A man was seen after the funeral near the burial lot carrying a gun; and two men who were returning from the cemetery were arrested at Outremont by Constable Walton, on a charge of being drunk and disorderly. Mayor Edwards fined them five dollars each; previous to the arrest they were openly displaying a revolver while in their cart. Several shots were fired by parties returning over the mountain from the funeral.

XIV.

PASTORAL AFTER THE BURIAL.

MGR. BOURGET'S LAST WORDS ON THE AFFAIR—THE PIOUS
DRUNKEN CROWD—THE GRAVE CURSED—THE DEAD MAN'S
MEMORY INSULTED—CHARACTERISTIC RECOMMENDATIONS.

The following pastoral letter, dated the day of the funeral, was read in the various Roman Catholic churches of the city the Sunday after:—

“Hail to Mary, conceived without sin, the honor of our people.”

“Let us greatly rejoice in this day that the Lord has made.”

“*Pastoral Letter of Mgr. the Bishop of Montreal concerning the interment of Joseph Guibord.*”

“Ignace Bourget, by the grace of God and of the Holy Apostolical See, Bishop of Montreal, &c., &c.

“To the secular and regular clergy, the religious communities and all the faithful of our diocese, salvation and blessing in our Lord.”

“It is for us, our very dear brethren, a duty to inform you how the difficulty of the interment of the said Joseph Guibord, which has so greatly occupied people's minds and caused fear of serious troubles, has ended. It is not, you will observe, to make known the fact to you, since it is already known to every one, but to enable you to appreciate the results of it, and to allow you to see where is the triumph that was expected from it.

“In our letter of eighth September last, a day of grace since it is consecrated to the happy birth of the glorious mother of God, we declared to you that the cemetery would not find itself polluted and interdicted by the sepulture of this unfortunate brother. We exhorted you in consequence to do no act of resistance to prevent entrance to those who had undertaken to perform it at all risks in this holy place.

"We again lifted up the voice on the third of October following, on the solemnity of the holy rosary, in order to prove to you that the said Joseph Guibord had justly deserved deprivation of the honors of ecclesiastical burial, for the reasons set forth in our letter, issued the date of that day. We explained in these two letters how we intended to make the ecclesiastical law respected, while allowing the body of this man to be deposited in a part of the cemetery.

"We have now, our very dear brethren, to signalize to you the facts that have been accomplished, in order that you may more and more comprehend how Divine Providence has regulated everything, so that we might attain the object we had proposed, to wit, that the law of the Church might have its course, while preserving the public peace and preventing the effusion of blood. For that is all the triumph we were ambitious of, and we need not here prove to you that this was the most beautiful. We desired to spare the blood of good fathers of families, so that they might not leave, by their death, either widows or orphans, and we triumph in having been able, through your docility, to obtain this success.

"Let us remark, first, that, at our request, many prayers were made in communities and families, to secure that this unhappy affair, which has made so much noise even in far distant places as well as in this city and the whole of our Canada, might be terminated without any coming to blows, at the risk of exciting the most hateful passions and kindling the flames of discord between good citizens, who have hitherto lived in peace like good brethren.

"Everything having passed in perfect calm, we have to thank the Divine Goodness, for having listened to our vows. We have at the same time to thank the devout souls who both in the religious communities and in Christian families have responded to our appeal in sending to heaven their sighs and lamentations in order to touch the heart of the Father of mercies and turn aside by this means the evils that might thunder upon our heads.

"We ought now to recall to your recollection certain facts which preceded the sad event that has happened to-day, namely, the translation of the body of the said Joseph Guibord from the

Protestant Cemetery, where it reposed since his death, into the Catholic Cemetery of Cote des Neiges.

" *The first fact worthy of our attention is that it was respect for the cemetery and the fear lest it were profaned by the burial of a man dead in the disgrace of the Church, which revolted a large number of Catholics and led them to oppose the entrance of his body into the holy place. It was zeal that produced this spontaneous movement, but it was not according to knowledge. However, it passed in calmness, and the public peace was not troubled. When one considers attentively what took place at that time, one cannot but admire the guidance of God who disposed all things so that each one might convince himself that one wounded to the quick the religious feeling of the people, and that He was not disposed to suffer that one should act in violation of the respect which He has for the dead.*

" *The second fact revealed in this attempt at the burial of Guibord is the docility of this people to the voice of their pastors. For although extremely excited and revolted in view of the outrage one wanted to commit upon the holy place, they quieted down after they had been made to understand that the thing would not be so. This is the reason why they continued to-day in perfect calmness despite the public demonstrations which were made, and which were of a nature to provoke and irritate them. Blessed, therefore, are those who showed themselves pacific on this day, so calculated to excite passions, for they shall see God when he comes upon the earth to recompense his elect. *Beati pacifici, quoniam filii Dei vocabuntur.**

" *The third fact which characterizes this, in many respects, unfortunate day, is the accomplishment of the threat which was made. For we had truly declared, in virtue of the divine power which we exercise, in the name of the pastors, that the place where this rebellious child of the Church has been laid is now in fact separated from the rest of the consecrated cemetery, to be no more anything but a profane place.*

"This is a fact accomplished with so much solemnity, and amid circumstances so deplorable, that it will remain deeply graven in the memory of the numerous strangers who shall visit the Cemetery, as well as that of citizens who shall daily go thither to pour forth their prayers. Each in casting sadly his regards on that

tomb which is not covered with the blessings of heaven because it is separated from the holy ground that the Church has blessed, will give way to emotions more or less painful. 'Here lies,' he will exclaim, in the recesses of his soul, 'the body of the too famous Joseph Guibord, who died in rebellion against the common Father of the Church, under the anathema of the Church; who could not pass the gates of this sacred place but that he was escorted by armed men, as if for battle against the enemies of the country; who, but for the good disposition of his fellow-citizens, would have caused blood to flow; who was conducted to this sepulchre, not under the protection of the Cross, but under that of the bayonets of the military; who has been laid in this grave in two feet of earth, not to the impressive (*onctueux*) chant of the prayers which the Church is accustomed to make for her children, but amid the curses (*maledictions*) contained in the breasts of the attendants; for whom the priest obliged to be present could perform no religious ceremony; could utter no prayer for the repose of his soul; could not say a single *requiescat in pace*; could not, in short, sprinkle a single drop of holy water, whose virtue it is to moderate and quench the flames of the terrible fire that purifies souls in the other world.'

"There will issue day and night from this tomb which contains the remains of an errant man who would persevere till death in his revolt against the Church, a lugubrious and lamenting voice which will cry loud enough:

"O all you who pass through this field of death, pause for a moment before this tomb, and seriously reflect upon my unhappy fate. May my example teach you that no one can with impunity despise God and His Church! Alas, the more *éclat* that has been raised over my dry and withered bones, the more a mark of infamy and dishonor has been attached to my name. Why was I not hidden in an obscure place, and in a ground of oblivion? I would be to-day as if I had never been born. My memory would not be a curse from age to age, as it ought to be, and my name would not be in every mouth to be accursed from generation to generation. Alas, one pretended to give me a triumph, and one has only succeeded in perpetuating my shame and my dishonor.'

"However it may be, our very dear brethren, it was for us a

painful but rigorous duty to let you hear our pastoral voice on this melancholy occasion. For it is necessary for us to witness on behalf of the indefeasible rights of the Church, and to protest against irregularities which have deeply hurt a clergy who have constantly shown themselves loyal to the Government and devoted to the country, and outraged faithful subjects to whom religion makes it an imperious duty to obey those who govern the State in administering justice.

"We have to declare to you, as solemnly as possible, that notwithstanding all that has been done to the contrary, the Cemetery remains holy ground, and continues to be worthy of all respect. As it is the Church which has blessed and sanctified it, it is also for her to prevent its being profaned. This is what she has done, while inviting her children to offer no resistance to the entrance of the funeral cortege into the holy place, which was made to-day, in order that it should not be profaned by the effusion of blood, and, at the same time, execrating the spot which was taken possession of, spite of her, to bury one of her children, who, in his life, dishonored her by his revolt and his injurious scorn.

"Nevertheless, these facts which we signalize to your serious attention have not, our very dear brethren, been accomplished without causing grave injuries to our holy father the Pope, whose venerable decree one has despised; to your pastors, whom one has trodden under the feet of authority; to the Cemetery, which one has seized by force of arms like a fortress of war; to the brethren, whose religious feeling one has unjustly wounded, and whose blood one would have cruelly shed without a visible protection of Divine Providence.

"In this view, the following are the recommendations we believe it our duty to make to each of you, in order that the honor due to the Cemetery may be required as much as possible by the Catholic population:—

"Therefore, be one and all of you, our very dear brethren, more and more penetrated with religious respect for your Cemetery, and enter it not except with fear and trembling. Make it not a place for walking or pleasure, but go there as a pilgrimage as often as you can. In traversing it consider it as the parish and city of the dead.

"There, pay attention, sleep the sleep of death all the men

and women (*ceux et celles*) who have for more than two hundred years inhabited our city. Pause over these thousands and hundreds of thousands of tombs which hardly contain anything but fleshless bones and inanimate ashes. Hear the eloquent voices that make themselves heard from the depths of these sombre dwellings. 'To-day it is our turn,' they tell you with the most startling tone; 'to-morrow it will be yours. Live every day as if every day you had to die, and wait not for the moment of death to prepare yourselves to die well. Let your life be passed in a faithful performance of all the commandments of the Lord. Oh take care that your Mother, the Holy Church, be not forced on account of your criminal negligence to refuse you entrance into this consecrated ground, there to receive the honors of ecclesiastical burial.'

"It will be by such pious practices, our very dear brethren, that you can honor your Cemetery with a particular worship. To encourage you in this the Church makes in the holy place touching prayers, plants crosses, erects monuments which help to remind us of our latter end, to forearm us against the sins and scandals which prevail in the world. It is with this object that we propose to construct in the Cemetery each time that we are requested, the Stations of the Cross (*Chemin de la Croix*). This is the practice at Rome, and it is also that which we desire to see established in all the cemeteries of this diocese, above all since we perceive that one would desire to make them a common and profane place.

"For you doubt not, our very dear brethren, that this sacred voice of the Cross attracts to the cemeteries during the pleasant season, a crowd of good Christians, who pray, weep, and think on their latter end, that they may sin no more.

"Oh, our very dear brethren, what lively emotions and tender sentiments one experiences in making the Stations of the Cross in a cemetery, in thinking that the blood of the Saviour flowed in torrents into the ardent braziers of purgatory, to wash the souls that are there purified by fire! What inexhaustible treasures of grace and blessing one procures for the pious souls in purgatory in gaining the indulgences attached to this pious exercise! What souls one sends to heaven in making the stations that lead to Calvary! How one returns home content when one has attended with piety to this admirable exercise!

" *The path of the cross* is therefore an excellent means of attaching a parish to its cemetery. Now what would it not do for love of this sacred place which recalls so many and so precious memories. It cares for and adorns it as much as possible, in order always to find in it something that will augment its piety. This is what may still be observed at Rome, where the custom is to keep lighted lamps on each tomb. We were struck in visiting the St. Laurent Cemetery outside the limits. For not knowing what place this was, we took it for one of the finest quarters of the holy city, so brilliant was it with the light of thousands of lamps that burned in it. Oh, it was a ravishing and startling spectacle for us this magnificent cemetery! The opportunity of experiencing our emotions at this happy moment presents itself too naturally for you not to profit by it.

" We cannot terminate this letter without ardent prayers, that after the example of the holy city you may have zeal for your cemeteries in order that they may be a visible and striking proof of your devotion to the dead. May this salutary devotion perpetuate itself in our happy country to the last generation. For with it are perpetuated in their entirety, faith, piety, patriarchal manners and religion.

" Please observe, our very dear brethren, that it is under the protection of the immaculate Virgin we write these presents, and that it was on the festival of her blessed birth, and on the solemnity of the rosary, which is for the Church an imperishable source of graces, that we brought to your attention the serious question which has so greatly occupied us. The reason is quite plain. It is because, to get over all the difficulties that assailed us, we felt the pressing need of casting ourselves at the feet of the Blessed Virgin who by her Immaculate Conception has bruised the venomous head of the old serpent. It will be for the same reason that this letter, which ought, it seems to us, to put an end to this grave difficulty, will be read at the festival of the Presentation of this august Child.

" O holy Mary, bring your powerful succor to your unfortunate children. Help those who are timorous and inconstant. Invigorate those who are feeble and languishing. Pray for the people who place all their trust in you. Intervene in favor of the clergy who labor to make you known, loved and served. Inter-

cede for all the religious communities and for all the religious women who are consecrated to you. May all those who honor and pray to you feel the wonderful effects of your powerful aid.

"The present pastoral letter will be published after mass in all the churches where public worship is held, and in the Chapter of all the religious communities, the first Sunday after its receipt.

"Given at Montreal, the 16th day of November, 1875, under our hand and seal and the countersign of our Secretary.

"*Io., Ev. de Montreal.*

"*Jos. OCT. PARE, Chanoine, Sec.*"

BIOGRAPHIES.

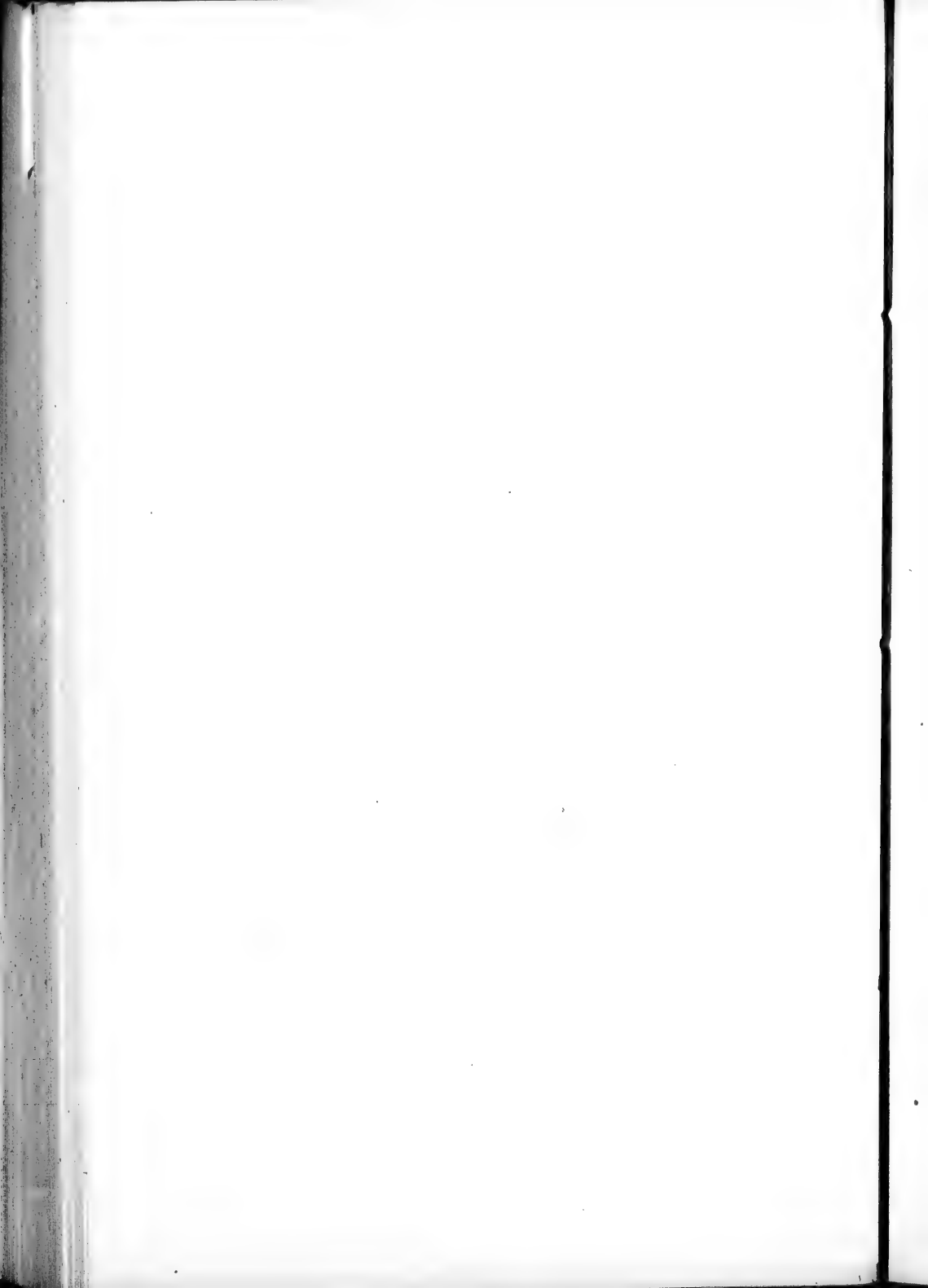
XV.

JOSEPH DOUTRE, Q.C.

The history of Joseph Doutre's life is that of the struggles of his countrymen for civil and religious liberty, and is, therefore, of more than personal interest. His ancestors were from the old Province of Roussillon, in the Department of Pyrenees-Orientales. His grandfather came from the immediate neighborhood of Perpignan, and had hardly arrived in Canada when the country passed under the dominion of England. Mr. Doutre was born at Beauharnois, in the Province of Quebec, in 1825; was educated at the Montreal College (of the Seminary of St. Sulpice), and studied law under the late W. Dumas and the Hon. A. W. Morin, and also under Judge Drummond. In 1844, at the age of eighteen, his first work, a romance of five hundred pages, entitled *Les Fiancés de 1812* (The Betrothed of 1812), was published. He was an early adherent of the Institut Canadien, and ever since the warm friend of that institution, which obtained its charter under his presidency. As soon as the *Avenir* newspaper had taken a fair start in 1848, Mr. Doutre became one of contributors. About that time a comedy published in that paper, under the title of *Tuque Bleue*, excited the passion of the late Sir George E. Cartier to such an extent that the latter went to the *Avenir* office to demand the name of the author, and, on being refused, said that all the writers were cowards. Mr. Doutre, on hearing of this, challenged Mr. Cartier to a form of settlement then more in vogue than now, and a meeting took place near the Chambly road, where pistol shots were exchanged to no effect either in the way of damage or reconciliation, and the feud assumed the character of a Corsican war, during which the friends of both parties had more or less to



GUIBORD'S GRAVE.—(See page 62.)



bear the brunt of fire. Both gentlemen were learned in the law and made use of their legal weapons. Mr. Cartier being at the head of the Government for nearly twenty years, had many odds on his side, but the other was endowed with an inexhaustible patience and coolness, and, after half a life time of waiting, he finds himself unscathed on the side of victory. Mr. Doutre has been a liberal contributor to the newspaper press, and most of the journals of the province have at times published contributions from him, although recently he has devoted himself more exclusively to his profession. In 1848 he published *Le Frère et la Sœur*, which was afterwards re-published in Paris. In 1851 he was the author of the laureate essay, paid for by the late Hon. Mr. De Boucherville, on "The Best Means of Spending Time in the Interests of the Family and the Country." In 1852 was published "*Le Sauvage du Canada*." To these should be added a series of biographical essays on the most prominent political men of that date, which appeared in the *Avenir*. As one of the secretaries of the association, formed in 1849, for the colonization of the Townships, he was instrumental in starting the first settlements of Roxton and the vicinity, which work, it is said, Mr. Cartier did much to impede, but could not destroy. In 1853 Mr. Doutre took the direction of the great struggle for the abolition of the feudal tenure, and by means of meetings held throughout the country, and diligence and care in the preparation of practical measures, the agitation came to a crisis at the general election of 1854, when the Parliament, filled with moderate abolitionists, passed a law which did away with this mediæval system of land tenure, without spoliation, and to the mutual satisfaction both of the seigniors and tenants. The law, as passed, failed to realize hopes of the more advanced abolitionists, but Mr. Doutre, being convinced that it contained enough to generate the desired consequences, contended as vigorously with his friends to secure its adoption, as he had done to obtain the law. Five years after the measure was completed, as it now stands, leaving nothing to be desired. Another campaign of equal importance began immediately after for making the Legislative Council elective instead of being nominated by the Crown, and a law was passed to this effect in 1856, at which time Mr. Doutre was requested to stand as candidate for the division of Salaberry,

in the place of the late lamented Hon. Jacob DeWitt, who had been frightened from the field by the liberal election expenditures of Mr. Louis Renaud, who then controlled the grain and flour market of Lower Canada. These expenditures were also successful in defeating Mr. Doutre. In 1858 there commenced, in a decided manner, on the part of the Roman Catholic Bishop of Montreal, the long looming work of destruction against everything which gave manifestation of life in the minds of educated Catholics. As the result of the exertions of those at the head of the Institut Canadien there were signs of a vigorous Liberal revival throughout the length and breadth of Lower Canada.

The Romish clergy foresaw that in proportion as the people became intelligent and powerful their own absolute sway over their minds and consciences would be diminished and destroyed. Hence they began a war of extinction against this growing intellectual life, and so far succeeded that in the course of a few years the whole national literary life fell into the abyss, leaving the Institut Canadien of Montreal to maintain the conflict alone. The rage of the hierarchy was then concentrated upon this cursed monument of a hated past and dreaded future. A combination of multifarious elements was arrayed to storm this last rampart of free reading and thinking. Mr. Doutre stood foremost in the hand-to-hand battle which followed, and for many years he has sustained the cause of mental freedom in the courts and in the press with extraordinary energy, persistency and ability.

In 1861, Mr. Doutre, under party pressure, accepted the candidature for Laprairie, which resulted in another defeat. This election, however, had the good effect of drawing attention to the evil system of two days polling, as it was evident that his first day's majority had been upset by large sums of money being brought into play upon the second day. This is the last time we find the subject of this sketch in the arena of politics. He has since devoted himself almost entirely to his profession. In 1863, under the Macdonald-Dorion Administration, he became Queen's Counsel. In 1866 he delivered a lecture before the Institut Canadien on "The Charters of Canada," a remarkably concise and complete synopsis of the political constitutions of the country under the French Government, and indicating by its title the intention of going further.

In the same year he was entrusted with the defence of Lamirande, the French banking defaulter, whose extradition was sought for before our Courts. After the kidnapping of the man, when he was about to be released, he followed up the demand for his restoration to the jurisdiction of our Courts, through the Foreign Office in London, to a point when the British and French Governments were very seriously out of harmony, when Lamirande solved the difficulty by surrendering all claims to further negotiations.

In 1869 the refusal of the Roman Catholic authorities to bury Guibord, because he was a member of the Institut Canadien, brought Mr. Doutre prominently forward before the country and before the world as the champion of religious and intellectual freedom. His conduct in connection with this case will give him a place in history alongside of the great Papineau as the two most illustrious French-Canadians of the present century. If political success depended on real merit and useful work, Mr. Doutre has had claims second to none to the good wishes of his countrymen. If, on the contrary, the acknowledgment of public services depended upon the *sic volo, sic jubeo* of a bishop, Mr. Doutre has showed himself ready at a moment's notice to put in jeopardy the earnest efforts of a useful life, by paying his respects to the remains of an honest man, who had committed no other wrong than to do what he felt to be right in refusing to resign his membership in a literary society. By subsiding and leaving a poor and desolate widow to wander with the remains of her husband, without telling her whether she should throw them ignominiously in the Potter's Field or apply for hospitality to the cemetery of a presumably hostile creed, and at the same time killing a society which had engaged twenty years of his life, Mr. Doutre could have secured the applause of the front of the file of the hierarchy, but not of true and patriotic men. His choice in this matter entailed political ostracism, and imposed upon him the most arduous task of following the case in question from court to court through all the degrees of jurisdiction in Canada, in order to obtain the burial of Guibord, of continuing the same in England, before the Privy Council, not only without fee, but at almost daily expense.

In 1874 Mr. Doutre was the leading counsel for the *Witness*

in the Mousseau libel case, a position in which he won the esteem of all who carefully followed the case.

In September of the present year (1875), the Dominion Government appointed Mr. Doutre as counsel to advocate its interests before the Fisheries Commission appointed by the English, American and Canadian Governments, under the Washington Treaty, to meet at Halifax to settle the question of the Atlantic Coast Fisheries. This appointment was made in consideration of Mr. Doutre's intimate acquaintance with the old French law, and of his great learning and ability.

It is, perhaps, impossible for those who enjoy a long inheritance of political and religious liberty, and to whom the anxieties and the triumphs of the struggle are only felt as the echoes of a distant past, to sympathize in the fullest degree with men who, during their own lives, are fighting out this battle anew, not only for themselves, but for their countrymen of the present and the future; but as we honor the names of those to whose faithfulness our present liberties are due, so will Canadians of another day look back with esteem to those who are now sacrificing themselves to break the shackles of their bondage.

XVI.

THE LATE JOSEPH GUIBORD.

Joseph Guibord, over whose burial Ultramontanism and the civil authority have come into conflict in this country, was a French-Canadian Roman Catholic of distinguished piety and fidelity to the doctrines of his Church, and of excellent moral character. He was a printer, and for thirty-six years was in the employ of the late Louis Perrault, and, later, of Louis Perrault & Sons. It is an interesting fact, in the light of recent events, that Guibord was for many years on intimate terms of friendship with Bishop Bourget and several high ecclesiastics. Mr. Perrault did all the printing for the Bishop's Palace, and for twenty years Guibord personally superintended the composition and printing of the Bishop's pastoral letters and other work belonging to the foreign missions of the Church. He became thus personally acquainted with a large number of the clergy, by whom he was greatly admired for his patience and carefulness, his honor and uprightness in all his dealings. A high ecclesiastical dignitary of this city lately said, in conversation with a well-known French-Canadian gentleman upon the present difficulty, that he regretted exceedingly that the censure of the Church should have fallen upon Guibord, for that having known him for upwards of twenty years, he was the last man who deserved such a misfortune. The same clerical authority stated that as far as honesty, public and private virtue, and integrity in the broadest sense of the term, were concerned, Guibord was without reproach. Guibord was a man of more than ordinary ability. When the catechism and hymns for the use of the Indians of the North-West were published, l'Abbé Garin, amongst others in charge of the mission, consulted Guibord as to the best mode of putting the Indian language into type, and of forming the matrices. Although the Indian language was entirely unknown to him, Guibord undertook the difficult task of putting these works into print, and

accomplished it so well that for ten years he furnished the Roman Catholic mission in the North-West with the catechism and hymns for the use of the Indians. In recognition of these services l'Abbé Garin and his coadjutors were accustomed to bring Guibord some of the finest mink and otter skins that could be obtained in the North-West. When visiting Montreal Guibord was one of the first whom l'Abbé Garin, Bishop of Anemour and others called upon, and the effusions of sentiment that passed between them gave no promise that the pious and simple-hearted printer would in future become the object of the anathema of his Church. Guibord was foreman of Mr. Perrault's printing establishment, and was greatly beloved by his employers and fellow-workmen for his kindness and many other good qualities. C. O. Perrault, Esq., Vice-Consul of France, from whom we obtain several of these particulars, says Guibord's punctuality was proverbial among those who knew him. The lawyers in St. Vincent street, where he then worked, were accustomed to say in reference to this habit of his: "It is not one o'clock yet, for Guibord has not passed." Mr. Perrault considered him as one of the first printers in the Dominion. He had great mechanical ingenuity, and was, in fact, a scientific printer. He was the first who introduced stereotyping into this country, and the first book stereotyped in Canada was done under his supervision. Mr. John Lovell states that he was personally acquainted with Guibord since 1825, and during all that time he never knew him to have erred through strong drink or bad company, or have been guilty of a dishonorable act. At the time of his death he was the oldest printer in Canada except Mr. Lovell. Guibord was sixty-two years of age when he died.

Guibord was not one of the founders of the Institut Canadien, but became a member thereof two or three years after its establishment. When the Institut fell under the displeasure of the Bishop for refusing to throw out of its library certain books that were placed in the Index at Rome, Guibord was one of about two hundred members who persisted in maintaining their connection therewith, and who appealed to Rome against the arbitrary course of the Bishop. Guibord died suddenly on the 18th of November, 1869, but three or four weeks previous, when seriously ill, he sent for a priest, who came and heard his confession. The

priest, acting under direct instructions from the Bishop, refused to administer to him extreme unction unless he would withdraw from the Institut, which Guibord declined to do. He rallied from that sickness, but his death, when it subsequently occurred, was so sudden that he had no time to send for a priest. A few days before his death Guibord met one of his fellow members of the Institut in the street, and asked him what was the news about their appeal to Rome. The answer was that no news had yet arrived, but the Institut hoped that justice would be done them. "I hope so too," said Guibord, "for I feel that I am going fast, and unless this matter is settled before I die there will be a row (*tapage*) about my grave. I am a poor man, and they will, no doubt, bury me along with those that have been hanged if they can." "Have no fears about that," returned his fellow member; "your friends will see that you are no worse treated than a rich man." The case of Guibord is another illustration of the curious fact that the greatest sufferers from the intolerant bigotry of the Roman Catholic clergy, have been men of superior excellence belonging to their own Church.

XVII.

BISHOP BOURGET.

Ignace Bourget, the Roman Catholic Bishop of Montreal, was born on the 30th of October, 1799, and has consequently nearly completed his 76th year. He is a native of the parish of Pointe Levis, and was the eleventh of a family of thirteen children. He was educated at the Seminary of Quebec and at the College of Nicolet, and appears to have been early remarked for his piety and an unyielding disposition in whatever he considered a religious duty. In 1821 he came to Montreal as Secretary to Bishop Lartigue, and labored with extraordinary zeal in assisting the Bishop to build the first episcopal palace, situated where St. James Church now stands, on St. Denis street. In 1837 he was consecrated Bishop of Telmesse, and coadjutor of Bishop Lartigue, and, upon the death of the latter in 1840, Bishop Bourget took possession of the episcopal see of Montreal. He lost no time in availing himself of his high position to bring the whole order of ecclesiastical affairs as closely towards the then existing Romish model as it was possible to do. He introduced a canonical chapter, and secured the establishment in this city of the order of the Jesuits. He has also founded fifteen or twenty other religious communities, besides a large number of charitable and educational institutions. In all these latter works he exhibited extreme jealousy of lay influence, and sought as much as possible to make them tributary to the influence of the ecclesiastical order. He has made five visits to Rome, and on his return from one of them, in 1856, he introduced into his diocese the rites and practices of the Roman liturgy, which, from its being different from what the people were accustomed to, caused considerable murmuring amongst them. In 1857 the cathedral and episcopal palace on St. Denis street were burned down, and the people of St. James Ward were desirous that he should construct his new cathedral and palace on the plateau near the corner of

St. Denis and Sherbrooke streets, where the necessary land was offered him, as being nearer to the centre of the Catholic population. His Lordship, however, had another locality in view, and thought he would carry the war into Africa by choosing the site for his new cathedral in the midst of the Protestant population of this city, to the general regret of the people in the East End. Besides the questions of the new liturgy and the site for the new cathedral, as showing that in a conflict between the wishes of the people and the will of His Lordship, the latter must prevail, Bishop Bourget has had other serious differences with his people. His ten years conflict with l'Institut Canadien is fully related in the previous pages of this book. His difficulty with the Seminary of St. Sulpice became at one time so serious that it was no easy matter for him to get admission to the Church of Notre Dame. This arose from his attempt to dismember the parish of Montreal. The Seminary, which, [from time immemorial, has held the rights and title of the cure of the parish, opposed the proposed division, and the matter was referred to Rome. The result was a decree from Rome authorizing the canonical erection of new parishes on condition that the *cure*s should be designated by the Seminary and named by the Bishop. The latter then proceeded to erect canonical parishes, but when the *cure*s of the new parishes applied for registers, the judicial authorities refused them on the ground that the law not recognizing canonical parishes, only the *cure* of the civil parish could keep registers. The Seminary again appealed to Rome against the action of [the Bishop, and the matter has for some time been left in abeyance. Bishop Bourget has made several attempts to found a Jesuit University in Montreal, but without success, the influence at Rome of the friends of the Laval University at Quebec having proved too strong for him, to the extent even that the Bishop did not conceal his opinion that he had been unjustly treated by the Roman Curia. On his last visit to Rome some years ago he procured a collection of bones said to be the relics of St. Zeno, who is stated to have suffered martyrdom at the hands of a Roman emperor, and sent them home to Montreal as objects of worship, and in hope that they might work "some miracle." They were carried through the streets in procession from one church to another, but there

was a noticeable lack of enthusiasm among Catholics on the occasion, as if many of them felt ashamed of the business, and the interest in the relics was mainly confined to the softer sex. Whether it is because they have not performed any miracle, or are eclipsed by the superior virtues of Lourdes water, we cannot say, but St. Zeno's bones seem to have fallen into oblivion. In 1872 the Bishop's golden wedding, or fiftieth year of his priesthood, was celebrated with great pomp, and occasion was taken by Father Braun to preach that noted sermon in which the pretensions of Ultramontanism were pushed to their extreme, and the hierarchy exalted to the level of divinity. These Ultramontane doctrines, it will be recollected, had been by the joint efforts of the Bishops of Three Rivers and Montreal embodied in a political declaration called the "Programme Catholique," for the purpose of being used as a test for all candidates aspiring to represent Lower Canadian constituencies in Parliament, Dominion or Local, Catholics being told that any who refused to subscribe to it were unworthy of their votes and enemies to the Church. None opposed this precious tissue of assumptions when first it was broached more emphatically than the Conservative party and its organs, but since their character has been injured, and their position rendered more or less precarious in consequence of the Land-Swap and similar scandals, they have assumed the airs of piety, and to all appearance there are now no more devoted adherents of the Programme and its abettors than they. On the occasion of the golden wedding it was also resolved to proceed with the erection of the Cathedral as a crowning monument of the Bishop's reign, and the building has since been progressing in proportion as means come in to help it, the Province being dragged at intervals by ecclesiastical nets in the shape of lotteries, bazaars, and requests for gifts to supply the needful. Of his recent raid upon the freedom of the press and public discussion and defiance of the civil power in the Guibord case, sufficient has already been said. He seems very pious and very self-willed, and a true Jesuit in the immovable persistence with which he carries out his policy, and which the Pope himself could scarcely oppose with success. In this way he seems completely to dominate his own people, whose national feelings he largely shares and still more largely uses.

There is little doubt that many dislike him, but, except a very few, they are careful to keep their opinions to themselves and make an outward submission. Even the Irish or English speaking Catholics have been forced to submit to what the majority of them at first thought injustice at the Bishop's hands in the deprivation of St. Patrick's Church of parochial rights, although there still exists an ill-concealed undercurrent of sullen dissatisfaction among them at what they consider the undue preference shown by the Bishop towards the French-Canadians, and which is not lessened by the humiliating way in which the English-speaking Catholics are at times treated in connection with public processions. This has led to jealous if not hostile feelings on the part of the two sections towards each other, all attempts on the part of their newspaper and other organs to mollify this mutual animosity by fond appeals to common sentiment appearing hitherto to be vain. It is said the Bishop does not like English-speaking people, as they are an obstruction to the realization of his ambitious projects of making Lower Canada an Ultramontane model. None have been so ready as Monseigneur Bourget to receive and adhere in the fullest sense to all the new dogmas of his Church. He is so devoted to the Immaculate Conception that he cannot indite a pastoral without one or more invocations to the Virgin Mary, while as regards the Infallibility Decree and the Syllabus, it has been said that he pushes their doctrines further than the Pope himself.

XVIII.

THE REV. CURE ROUSSELOT.

The Rev. Victor Rousselot, Curé of the Parish of Notre Dame of Montreal, was born in France on the 17th of January, 1823, at Cholet, in the department of Maine-et-Loire. He was the son of Jean Rousselot and Marie Allion. The Rousselot family is wealthy, and one of the brothers of Victor is engaged in the banking business at Marseilles, and is reputed very rich. The subject of this sketch was ordained a priest in Paris on the 10th of December, 1846; was Vicar at Cholet in 1853; joined the Seminary of St. Sulpice in Paris a short time after; and came to Canada on the 29th of May, 1854. After serving eleven years as a priest he was, on the death of Rev. Mr. Provost, created Curé of the Parish of Notre Dame on the 7th of April, 1866. The Rev. Mr. Rousselot has been the possessor of quite an extensive private fortune, the most, if not all, of which is employed in works of piety and charity. He is the founder of the Orphan Asylum in Bonaventure street, which was built entirely by his own means. He is likewise the founder of the Nazareth Asylum for the Blind in St. Catherine street, an institution of great usefulness and very well appointed. This institution was built partly by his own means, and partly by private donations, but it owes its existence entirely to the energetic Curé of Notre Dame. Mr. Rousselot has visited Rome once since coming to Canada. This was in 1872, and was on business relating to the difficulties between the Seminary and the Bishop, concerning the division of the parish. Father Rousselot is slightly under the medium height, but compactly built, and evinces great industry and energy, as well as good administrative ability. His manners are very pleasant and even cordial; he is personally popular among the clergy and esteemed by the people. He owes his notoriety chiefly to his connection with the Guibord case. As President of the Fabrique, or churchwardens, he exerts a controlling influence over that body; and having been ordered by his Bishop to refuse ecclesiastical sepulture to

Guibord's remains, he has obeyed with a firmness indicative probably of the strict nature of the injunctions laid upon him by Mgr. Bourget. In private conversation he has often expressed his regret at the occurrence of the Guibord difficulty, answering enquiries with a smile and the words, "You know I am only obeying orders from my superior," and his correspondence with Mr. Doutre published recently leads to the conclusion that the necessity of this implicit obedience was a more convincing reason to his mind than anything else that could be urged in support of this refusal of sepulture. Rev. Mr. Rousselot has withstood the Bishop in other matters involving the interests of the Sulpician order to which he belongs, notably in the case of the registers and division of parishes, and has been more than once castigated by His Lordship's inquisitorial organ. The gentlemen of the Seminary used to have a reputation for being moderate and constitutional, but as the Ultramontane party have become dominant in the Church in these days, it is supposed that they have no choice but to harden their faces, if not their hearts, and promote any arbitrary policy that may be cut out for them by their "superiors." From an exterior point of view such a position appears to be ignoble, especially when they have to submit to be lampooned by protégés of the Bishop and represented as demons plotting against him under hatches, while he is praying above with celestial ecstasy in the midst of a choir of angels—as the "*Comedie Infernale*" depicts them, and then to bear the expense of law-suits forced upon them from the same quarter.

When men are false to their reason they soon lose their dignity, for is it not reason alone that distinguishes man from the inferior animals, and has not the Church of Rome forbidden its free exercise in regard to the weightiest matters with which he can concern himself? Was this noble faculty given merely to weigh sugar and tea withal, and its exercise forbidden in the higher realms of religious enquiry? In this view those outside the Church of Rome who enjoy freedom of conscience often feel pity for the gifted men within the pale of that Church who abandon, to all appearances by a compulsion they are unable to resist, the convictions of a lifetime to accept new dogmas, as has been the case with so many eminent divines formerly opposed to the Infallibility Dogma, who gave in to it after it was decreed,

XIX.

MAYOR HINGSTON.

William Hales Hingston, Esq., M.D., L.R.C.S., E., D.C.L., &c., Mayor of Montreal during the last and most exciting portion of the Guibord burial controversy, is a son of the late Lieutenant-Colonel Hingston, of H. M. 100th Regiment, which was afterwards amalgamated with the 99th, and subsequently disbanded. After its disbandment, he settled on the Chateauguay River, near Huntingdon. He here organized the militia force in that county, of which he was given the command. He died at an early age, leaving a widow and six children, of whom the subject of this sketch was the youngest; being then only eighteen months old. The widow, with rigid economy, managed to educate her children, and William, who with the rest of the children was brought up a Catholic by his mother, was sent to a grammar school in the neighborhood, of which Rev. Mr. Williams, a Church of England minister, and subsequently Mr. (now Sir) John Rose were teachers. At this school and the Montreal College, to which he was sent at the age of thirteen, he obtained high honors, at the latter institution at the end of the first year obtaining a prize in every branch, carrying off three first and two second prizes.

He next spent two years studying pharmacy with Mr. R. W. Rexford, when he entered upon the study of medicine at McGill College. Immediately on his graduating he went to Edinburgh to obtain the surgeon's diploma from the celebrated university there, and visited England, Ireland, and most countries of Europe, spending the greater part of his time in the hospitals, and bringing back with him diplomas from Scotland, France, Prussia, Austria and Bavaria. In 1853 he began practising in Montreal, and now ranks amongst the first in his profession, and is much thought of as a surgeon abroad. Soon after beginning his practice here he was appointed surgeon to the English-speaking department of the Hotel Dieu Hospital. He was one of the organizers of the McGill University Society, and on the organization of

Bishop's College Medical School was named Professor of Surgery, and afterwards Dean of the Faculty. Both of these positions he resigned, as it appears his duties in connection with them were incompatible with his position at the Hotel Dieu Hospital. He received the decree of D.C.L. from Bishop's College at Lennoxville in 1871. He was the first Secretary for the Province of Quebec of the Dominion Medical Association, and last year was elected Governor of the College of Physicians and Surgeons of Lower Canada. He was twice elected President and three times Vice-President of the Medico-Chirurgical Society of Montreal. Last year he was elected to the civic chair of Montreal, principally with the view of, by his advice and knowledge, improving the sanitary condition and character of the city. He was recently married to Miss Margaret McDonald, second daughter of the Lieutenant-Governor of Ontario.

XX.

HON. CHARLES J. E. MONDELET.

Charles Joseph Elzear Mondelet, a Judge of the Court of Queen's Bench, is the son of Jean Marie Mondelet, notary, and was born at St. Charles, River Chambly, 27th December, 1801. He was educated at the Roman Catholic Colleges at Nicolet and Montreal, finishing his education at the latter in 1819. He was then immediately employed as an assistant to the Astronomical Commission, appointed to define the position of the boundary line between the United States and Canada, under the treaty of Ghent. He studied law first under Mr. O'Sullivan, who afterwards was appointed Chief Justice of the Court of King's Bench, and completed his legal education under his brother, Dominique Mondelet, who was appointed Judge of the Superior Court. He was admitted to the bar in 1822, and after practising before the bar for twenty years was appointed District Judge for Terrebonne, L'Assomption and Berthier. In 1844 he was appointed Judge of the Circuit Court at Montreal; in 1849, Judge of the Superior Court; in 1855, Judge of the Seignorial Court, and in 1858, Assistant Judge in appeals in the Court of Queen's Bench.

From his admission to the bar till his appointment to the Bench he took an active part in politics, and was twice arrested for political offences, but never put on trial. He published his *Letters sur l'Education* in 1840, the suggestions contained in which are said to have been embodied in the school law passed in the first session after the Union in 1841.

Mr. Justice Mondelet bears a very high character for his legal learning and judicial fairness, and, as will be seen by reference to the previous portions of this book, was the judge whose decision in the Guibord case was endorsed by the Privy Council.



HON. CHARLES J. E. MONDELET.—(See page 144.)

XXI.

CORRESPONDENCE BETWEEN THE MAYOR, BISHOP BOURGET AND HIS PRIESTS.

Much importance has been attached to the correspondence between Mayor Hingston, the Bishop and the Priests, in connection with the burial of Guibord, just previous to its having taken place. It had been our intention to have closed this volume with the biographies, but as this correspondence has since been made public, we insert it here.

Mayor Hingston had several interviews with the Roman Catholic Bishop, the last being on November 5th, in regard to the burial. His Lordship was ill in bed most of the time, but on November 6th he sent the following letters to the Mayor :—

The Bishop of Montreal presents his best compliments to His Worship the Mayor, and expresses his fervent desire that by the grace of God he may be able to maintain the peace in our city.

The accompanying letter, which he is at liberty to show to all the curés of the city and suburbs, will enable him to come to such an understanding with those gentlemen as shall facilitate the attainment of the desired result. The curés to whom Mr. the Mayor may present this letter are : Rev. Messrs. Rousselot, Curé of Notre Dame ; Dowd, Curé of St. Patrick ; Hogan, Curé of St. Ann's ; Tranchemontagne, Curé of St. Joseph ; Graton, Curé of St. Henri ; Maréchal, Curé of Notre Dame de Grace ; Taillon, Curé of Coteau St. Louis ; Lonergan, Curé of Ste. Brigitte ; Lavallee, Curé of St. Vincent ; Dugas, Curé of Hochelaga ; Sentenne, Curé of St. Jacques.

It may be remarked that the Rev. Jésuit Fathers and the Rev. Oblat Fathers would render assistance to the cause if the Mayor were to see their Superiors and have them asked to make

the same announcement in their churches as the *curés*. It will also be done at the Cathedral.

It may also be remarked that this invitation to peace might be made by Mr. Maynard, who officiates at St. Jean Baptiste ; Mr. Salmon, who officiates at St. Gabriel ; Mr. Seguin, who officiates at Ste. Cunegonde ; Mr. Dubuc, who officiates at the Sacred Heart of Jesus ; and Mr. Beaubien, who officiates at St. Paul.

It is more than credible that all the Catholics of the city are organized to prevent the body of Guibord from entering into the cemetery.

If the Mayor cannot see all these gentlemen, he will please inform the Bishop of the fact as soon as possible.

(Signed), † Ig., Bishop of Montreal.

Nov. 6th, 1875.

MONTREAL, 6th Nov., 1875.

MR. CURE,—His Worship the Mayor will have the kindness to deliver this to you, and he will himself inform you of his anxiety on account of the very serious difficulties that it is feared will be caused by the burial of Joseph Guibord, which it is proposed to effect within a few days. If, as I have recommended them to do, Catholics will refrain from being présent at the interment, all fear of trouble will be dispelled, for any conflict will then be impossible ; and it is, as you cannot doubt, the most simple means of accomplishing the triumph of the good cause—by peace.

In order to bring about this happy result, please, after Mass, urge anew upon all your braves, to remain quietly at home. This letter is to be communicated to the *curés* of the city and suburbs. Pray and demand prayers for the maintenance of peace, and believe me,

Your very humble and devoted servant,

(Signed), † Ig., Bishop of Montreal.

To Messrs. the *Curés* of the City and the Suburbs.

In reply to the Bishop's letter thus presented the Mayor received replies to the following effect :—

From Rev. J. M. Marechal, Notre Dame de Grace, Nov. 3rd :—

In reply to your request, I can assure you that *those interested*

in the question of the burial of this poor Guibord have nothing to fear from the population of my parish, especially from that of Cote des Neiges. You may live in peace in this matter so far as Notre Dame de Grace is concerned. There will not be even three sightseers from it, I can assure you.

From Rev. Joseph Graton, St. Henri, 6th Nov. :

In reply I can assure you I will do all that depends on me to prevent my parishioners from attending the funeral of Mr. Joseph Guibord. I can give you the assurance that my advice will be listened to by my good parishioners, and you may depend on my word.

From Rev. L. M. Taillon, Coteau St. Louis, 6th Nov. :

In reply to your request of this day I have the honor to inform you that I will do all in my power to prevent my parishioners from attending the burial of the late Joseph Guibord, and I hope that after my recommendation there will not a single one attend it, either through curiosity or through any other motive.

From Rev. Mr. Rousselot, Curé of Notre Dame, Nov. 7th, 1875 :

According to the desire of Mgr. of Montreal, and that of your Honor, we yesterday read at the issue of Mass in the Church of Notre Dame the letter which His Lordship had sent me, requesting that *no Catholic attend Guibord's funeral, but that every one stay at home*. The brother who read this letter, M. Giband, insisted on these recommendations in a manner that all our faithful must have well understood. As for myself I can answer that my sincerest prayer is that not even one of our parishioners may be found at this sad burial.

Under the present circumstances, this complete absence would be, to my mind, the best way for them to protest against the profanation of our cemetery, and the violation of their rights and the laws of the Church. In consequence, you may depend that I will use my influence to dissuade my parishioners from going to the Cote des Neiges Cemetery on the day and hour of the said burial.

From Rev. P. Dowd, St. Patrick's Church, Nov. 8th, 1875 :

In answer to your enquiries, I beg to say that I am convinced that St. Patrick's congregation are quite disposed to obey the earnest advice of their Bishop, and that though acutely sensible to the attack made upon their religious liberties they will abstain from taking any part in making opposition to the burial of Guibord in the future, as they did in the past.

Please use your authority, however, to prevent any irritating display which cannot be necessary, and might lead to bad consequences.

From Rev. J. Hogan, St. Ann's Church, Nov. 6th, 1875 :

His Lordship the Bishop of Montreal, in a circular sent to me on to-day, commands me to exhort my parishioners to abstain from taking any notice of the Guibord funeral. To this order I shall attend. I may here state that as far as I can judge, the Catholics of St. Ann's Parish will take no steps in relation to that funeral. I am satisfied that they will obey the pastors. Let me, however, remark that it would not require much provocation to arouse their passions; and hence, I consider that unnecessary parade would be both injudicious and dangerous.

From Rev. J. A. Tartel, O.M.J., St. Peter's Church, Nov. 7th :

In answer to the desire which you expressed to me of being informed as to the disposition of the people of our district, I am happy to be able to tell you that our people are quite calm and peaceable, and at this moment only desire one thing in regard to the question which occupies us. This is that the interment take place as soon as possible and that we may be at last relieved from this trouble which harasses them.

From Rev. Th. Fleck, Sec., St. Mary's College, Nov. 9, 1875 :

It is my firm conviction that the Catholics of this city, unless they should be provoked by any insulting demonstration, are sure to obey the injunctions of their Bishop and to let severely alone the remains of the unfortunate Guibord. They indeed most keenly feel that if the burial does take place in consecrated ground,

their dearest and holiest rights will be most wantonly sacrificed. If the outraged Catholics of Montreal had meant, so far, to use violence against what they deem the worst kind of tyranny, they might have easily taken the law into their own hands and by a summary measure put an end to the contest. But we may rest assured that they will suffer persecution for conscience' sake rather than grieve and disobey their spiritual guides.

From Rev. J. Lonergan, St. Bridget's, Montreal, Nov. 6, 1875 :

After taking communication of Bishop Bourget's letter to be read to-morrow in my church, might I venture a few words on the Guibord burial. I am parish priest of the largest city parish after Notre Dame. My congregation is composed of Canadians and Irishmen. The feeling here sometime ago was intense. All they wanted was *no letter* from the Bishop. A first letter came and the feeling subsided. His letter of to-day will, I am sure, finish the work of peace, and authority will keep in subjection the wounded feelings of a Catholic population. I feel bound to say that some newspapers are rendering a bad service to the cause by saying that the volunteers are to be called out, and that the city police are drilling, so as to meet any emergency. This is only calculated to fire up again the slumbering cinders. I have every reason to believe that if no unnecessary provocation were offered, no trouble could be anticipated; but if a demonstration such as a parade through the streets of Montreal be attempted, then let the responsibility devolve *sur qui de droit*. If the Cote St. Catherine route be adopted, which is just as short, and would equally meet the exigencies of the Privy Council's decree, I am inclined to believe that all would go off quietly.

From Rev. J. B. Maynard, St. Jean Baptiste Village, Nov. 6th, 1875 :

I have received your letter on the subject of the Guibord affair, and I make it a duty to tell you that our citizens will not interfere at all in this sad affair. They will not go to this interment, I am convinced, for they have the good habit of listening to their pastor, and their pastor will tell them not to go there even out of curiosity.

As the Mayor contended that he had not the power to enter adjoining municipalities where there are other Mayors and Corporations, and as the Protestant Cemetery was in the municipality of Outremont and the Catholic in that of Cote des Neiges, he sought, through the agency of Montreal friends, the invitation of the Mayors of those municipalities. They both asked his assistance to preserve peace on the day of the burial, to which he replied consenting to use his best endeavors to that effect.

OTHER DOCUMENTS.

In addition to these letters, copies of other documents have been placed in our hands; one is a resolution passed by the Police Committee on the 2nd of November, to the effect that the Mayor had entire control over the police force, and that the committee would readily give His Worship all the assistance he might desire in any emergency.

A copy of a telegram received by Chief Penton from the Adjutant-General of Militia, as follows: "Colonel Fletcher has been authorized to loan one hundred rifles on requisition of Mayor," and which was sent to the Mayor.

Requests from the Mayor to Col. Fletcher to supply the rifles; also a letter dated the 3rd to Chief Penton, informing him of this, and to hold himself in readiness for instant action, as he had received official notice that a riot might be apprehended in the city on or about November 4th.

Letters from the Mayors of Cote des Neiges and Outremont asking for police aid from the city in case there might be a disturbance in their municipalities caused by persons from the city, and replies from the Mayor granting the same.

Witness Publishing House, Montreal.

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WITH

A Selection of Hymns and Songs,

A COMPENDIUM, BY THE AID OF WHICH ANYONE WITH
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LEARN AND TEACH THE TONIC SOL-FA SYSTEM.

—:—

EDITED BY

JOHN McLAREN.

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Key B Flat. LET THE LOWER LIGHTS BE BURNING.

: s₁ . , l₁ | s₁ : — m . : r . d | t₁ . l₁ : — : l₁ . , l₁ |
Bright - ly beams our Father's mercy, From his

| r : — d : t . d | r : — : s₁ . , l₁ | s₁ : — d : r . m | f . l₁ : — d . , r |
light - house ever - more, But to us He gives the keeping Of the

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